EPA-Approved

Texas Statutory & Regulatory Requirements

Applicable to the

Hazardous Waste Management Program

DECEMBER 1997

EPA APPROVED TEXAS STATUTORY REQUIREMENTS APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM *
December 1997

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* Copies of the Texas statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164-0526.

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WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. GENERAL PROVISIONS

§ 361.001. Short Title

This chapter may be cited as the Solid Waste Disposal Act.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Acts 1991, 72nd Leg., 1st C.S., ch. 15, § 1.09, provides:

"Transfer of Environmental Protection Duties to the Texas Water Commission. (a) On March 1, 1992, the powers, duties, obligations, functions, and activities of the Texas Board of Health and the Texas Department of Health or the officers of those agencies assigned by the following provisions of law are transferred to the Texas Water Commission:

"(1) Subchapter C, Chapter 341, Health and Safety Code;

"(2) Chapter 361, Health and Safety Code;

"(3) Chapter 362, Health and Safety Code;

"(4) Chapter 363, Health and Safety Code;

"(5) Chapter 364, Health and Safety Code;

"(6) Chapter 365, Health and Safety Code;

"(7) Chapter 366, Health and Safety Code;

"(8) Chapter 367, Health and Safety Code;

"(9) Chapter 368, Health and Safety Code;

"(10) Chapter 401, Health and Safety Code, as it relates to the licensing and regulation of the disposal of radioactive substances, including by-product material, radioactive material, radioactive waste, source material, sources of radiation, and special nuclear material as those terms are defined by Section 401.003, Health and Safety Code; and

"(11) Chapter 402, Health and Safety Code.

"(b) The secretary of state is authorized to adopt rules as necessary to expedite the implementation of this section."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Vernon's Ann.Civ.St. art. 4477-7, § 1.

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Annual Survey of Texas Law: Environmental Law. Diana C. Dutton, 45 Sw.L.J. 389 (1991).

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§ 361.002. Policy; Findings

(a) It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated.

(b) The storage, processing, and disposal of hazardous waste at municipal solid waste facilities pose a risk to public health and the environment, and in order to protect the environment and to provide measures for adequate protection of public health, it is in the public interest to require hazardous waste to be stored, processed, and disposed of only at permitted hazardous industrial solid waste facilities.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 1, eff. Sept. 6, 1990.

Historical and Statutory Notes

Section 1 of art. 1 of the 1990 amendatory act provides:

"(a) This Act is enacted as part of the state's continuing statutory revision program under Chapter 323, Government Code. This Act is a revision of statutes, without substantive change, for purposes of Article III, Section 43, of the Texas Constitution and has the purposes of:

"(1) conforming the Health and Safety Code to certain laws that were passed by the 71st Legislature and that amended the laws codified by the Health and Safety Code or enacted new laws that should be codified in the Health and Safety Code;

"(2) codifying certain laws that were omitted from the Health and Safety Code;

"(3) making necessary corrective changes in the Health and Safety Code; and

"(4) making necessary conforming amendments to other laws.

"(b) The Code Construction Act (Chapter 311, Government Code) applies to this Act as if this Act were a code governed by that Act.

"(c) The repeal of a law, including a validating law, by this Act does not remove, void, or otherwise affect in any manner a validation under the repealed law. The validation is preserved and continues to have the same effect that it would have if the law were not repealed. This subsection does not diminish the saving provisions prescribed by the Code Construction Act (Section 311.031, Government Code).

"(d) A transition or saving provision of a law codified by this Act applies to the codified law to the same extent as it applies to the original law. The repeal of a transition or saving provision by this Act does not affect the application of the provision to the codified law. In this subsection, "transition provision" includes any temporary provision providing for a special situation during the transition period between the time of the existing law and the establishment or implementation of a new law."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1989, 71st Leg., ch. 536, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 1.

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1. Validity of prior law

Statute provides sufficient guidelines to Department of Health and does no more than delegate to Department the authority to establish reasonable rules and regulations to carry out express purposes of this section, to safeguard health, welfare, and physical property of people, and to protect environment, which include licensing of solid waste disposal sites. Med-Safe, Inc. v. State (App. 1 Dist.1988) 752 S.W.2d 638.

2. Construction and application

Statute and bill creating the Anderson County Underground Water Conservation District are not, on their face, in conflict. Op.Atty.Gen. 1987, No. JM-827.

3. Validity of regulations

Regulations of the Department of Health governing solid waste disposal facilities are not unconstitutionally vague, even though they do not contain definitions of the terms "land use" or "improper land use." Browning-Ferris, Inc. v. Texas Dept. of Health (App.1981) 625 S.W.2d 764, ref. n.r.e.

§ 361.003. Definitions

Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Board" means the Texas Natural Resource Conservation Commission.

(3) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(4) "Class I nonhazardous industrial solid waste" means any Class I industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(5) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

~~(6) "Commission" means the Texas Natural Resource Conservation Commission.~~

(7) "Commissioner" means the executive director of the Texas Natural Resource Conservation Commission.

(8) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(9) "Department" means the Texas Natural Resource Conservation Commission.

(10) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(11) "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(12) "Executive director" means the executive director of the commission.

(13) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(14) "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

~~(B) does not include:~~

~~(i) petroleum, which means crude oil or any fraction of crude oil that~~ is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(15) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(16) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(17) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(18) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(19) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(20) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

~~(21) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.~~

~~(22) "Motor vehicle" has the meaning assigned by Section 2(b), Uniform~~ Act Regulating Traffic on ~~Highways (Article 6701d~~, Vernon's Texas Civil ~~Statutes).~~

~~(23) "Municipal solid waste" means solid waste resulting from or incidental~~ to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(24) "Notice of intent to file an application" means the notice filed under Section 361.063.

(25) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(26) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(27) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(28) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission or department determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(29) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the board of health under that law.

~~(30) "Recycling" means the legitimate use, reuse, or reclamation of solid waste.~~

(31) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law,[1] or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(32) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

~~(33) "Removal" includes:~~

~~(A) cleaning up or removing released hazardous waste from the environment;~~

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(34) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(35) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the commission.

(36) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

Subdivision (37) expires on delegation of Resource Conservation and Recovery Act authority to the Railroad Commission of Texas

(37) This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

~~(A) does not include:~~

~~(i) solid or dissolved material in domestic sewage, or solid or dis~~solved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

Subdivision (38) is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas

~~(38) This subdivision is effective on delegation of the Resource Conserva~~tion and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B) does include hazardous substances, for the purposes of Sections ~~361.271 through 361.277, 361.280, and 361.343 through 361.345.~~

~~(39) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.~~

(40) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the board of health or commission.

(41) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

~~(42) [Blank].~~

~~(43) [Blank].~~

~~(44) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any land or surface or subsurface water in the state that renders the land or water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare or impairs the usefulness or the public enjoyment of the land or water for any lawful or reasonable purpose.~~

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 2, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, § 1.01, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.025, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.01, eff. Sept. 1, 1991.

[1] 42 U.S.C.A. § 9604.

Revisor's Note

(1) The source law refers to the Texas Department of Health's authority to adopt rules. Article 4414b, Revised Statutes, provides that the Texas Board of Health is the entity that adopts rules. Consequently, the revised law assigns that duty to the Texas Board of Health.

(2) The source law definition of "environmental response law" refers to "Pub.L. No. 96-510." This reference is changed in the revised law to "42 U.S.C. Section 9601 et seq." for consistency with other citations to federal law.

(3) The source law refers to "an incorporated city or town." The revised law substitutes "municipality" for "city or town" because that is the term used in the Local Government Code. In addition, since under the Local Government Code all municipalities are incorporated, the revised law omits as redundant the reference to "incorporated" and refers only to municipalities.

(4) The revised law omits as unnecessary the source law definition of "notice of intent to file an application."

(5) The revised law omits the definition of "person" because a definition containing the same substance is provided by the definitions section of the Code Construction Act (Section 311.005, Government Code).

(6) The source law refers to Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes). That statute is revised as Chapter 401, and the revised law reflects this change.

(7) The revised law omits the definition of "state agency" and "state agencies" contained in Section 4(a) of V.A.C.S. Article 4477-7. The source law gives the Texas Department of Health and the Texas Water Commission divided responsibilities in the regulation and management of solid waste. Many of the provisions of the source law apply to both the department and commission and many provisions apply equally to each separately. The omitted definition allowed a common reference to be used when referring to either or both of the agencies. That generic term is misleading to any reader of the law who is not familiar with the act as a whole and often does not work well in context. In this code the generic terms are eliminated and references to the department and commission are used as needed.

Historical and Statutory Notes

Section 1.25(a), (d), (e) of Acts 1991, 72nd Leg., ch. 296 provides:

"(a) This article applies to any permit application, including permit applications for facilities operating under interim status, covered by the terms of this article that is pending approval on the effective date of this article. Any application for renewal of or amendment to a permit for an existing facility that includes a request for authorization to increase capacity at the facility shall comply with the terms of this article; provided, however, that the provisions of Sections 1.16 and 1.17 of this article do not apply to an application for renewal of or amendment to a permit for an existing facility or to an existing facility burning waste-derived fuels under a Texas Water Commission or Texas Air Control Board permit on the effective date of this article."

"(d) The provisions of this article do not apply to applications that are on file on the effective date of this article and that are only for permits for the disposal of treatment residues and other nonincinerable wastes generated at the same facility or at facilities wholly owned by the applicant.

"(e) The provisions of this article apply to any application to amend a nonhazardous waste facility permit to accept hazardous waste that is pending approval on the effective date of this article and to all existing nonhazardous waste permits. If a nonhazardous waste facility has become a hazardous waste facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. The provisions of this article and this subsection do not apply to a noncommercial facility that is required to obtain a hazardous waste permit under the federal toxicity characteristic rule."

Sections 1.29 and 3.01 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.29. If either S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and is approved by the Governor, the duties, powers, and responsibilities conferred by this article on the Texas Water Commission, the Texas Department of Health, or the Texas Air Control Board are transferred to the Texas Department of Natural Resources."

"Sec. 3.01. This Act may be referred to as the Waste Reduction Policy Act of 1991."

Neither S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, were passed or approved by the Governor.

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.030 amended § 1.25 of Acts 1991, 72nd Leg., ch. 296 by adding (h) to read as follows:

"It is the policy of this state to encourage waste minimization through recycling. Therefore, the provisions of this article do not apply to any hazardous waste management facility that, before or during a recycling process, stores hazardous waste if the hazardous waste management facility engages only in storage incidental to a recycling process that does not include any treatment or disposal of hazardous waste by incineration, landfilling, or deep well injection on site. This subsection only applies to applications pending at the Texas Water Commission on the effective date of this article and does not apply to any commercial hazardous waste management facilities that burn waste-derived fuel."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1973, 63rd Leg., ch. 576, § 1.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2946, ch. 503, § 1.
Acts 1985, 69th Leg., ch. 566, § 1.
Acts 1985, 69th Leg., ch. 795, § 1.160.
Acts 1985, 69th Leg., ch. 921, § 3.
Acts 1987, 70th Leg., ch. 279, § 1(a), (b).
Acts 1987, 70th Leg., ch. 305, §§ 4, 5, 14(1), (2).
Acts 1989, 71st Leg., ch. 536, § 2.
Acts 1989, 71st Leg., ch. 641, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 1, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 2.

Cross References

Recycling, exemption from franchise tax, see V.T.C.A. Tax Code, § 171.085.
Removal and remedial action agreements, petroleum, see § 361.401.

~~[Sections 361.004 to 361.010 reserved for expansion]~~

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS DEPARTMENT OF HEALTH AND TEXAS WATER COMMISSION

Administrative Code References

Agriculture Department, pesticides, storage and disposal, see 4 TAC § 7.21.
Air Control Board,
  Control of air pollution from hazardous waste or solid waste management facilities, see 31 TAC § 120.1 et seq.
  Control of air pollution from municipal solid waste facilities, see 31 TAC § 121.1 et seq.
Department of Health,
  Formal hearing procedures, hearings on administrative penalties, see 25 TAC § 1.33.
  Solid waste management, see 25 TAC § 325.1 et seq.
Industrial solid waste, see 31 TAC § 335.1 et seq.
Water commission,
  Applications processing,
    Draft permit and compliance summary, see 31 TAC § 281.21.
    Initial review, see 31 TAC § 281.3.
  Consolidated permits, see 31 TAC § 305.1 et seq.
  Enforcement, see 31 TAC § 337.1 et seq.
  Industrial solid waste and municipal hazardous waste, see 31 TAC § 335.1 et seq.

~~§ 361.011. Department's Jurisdiction: Municipal Solid Waste~~

~~(a)~~ The department is responsible for the management of municipal solid waste, ~~excluding hazardous municipal waste,~~ and shall coordinate municipal solid waste ~~activities, excluding activities concerning hazardous municipal waste.~~

(b) The board of health ~~shall~~ guide the department in its management of municipal solid waste, ~~excluding hazardous municipal waste.~~

(c) The department shall accomplish the purposes of this chapter by controlling all aspects of the management of municipal solid waste, ~~excluding management of hazardous municipal waste,~~ by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(d) The department has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its ~~responsibilities under this chapter.~~

(e) In matters under the department's jurisdiction, the department shall consult with:

(1) the commission concerning water pollution control and water quality aspects;

(2) the Texas Air Control Board [1] concerning air pollution control and ambient air quality aspects; and

(3) the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the agency's discretion, for the disposition of enforcement matters under this chapter.

(f) If referral is determined to be mandatory or appropriate, the agency shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The agency shall use all available enforcement options.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.02, eff. Sept. 1, 1991.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Historical and Statutory Notes

Sections 1.088, 1.090 to 1.092, 1.094, 1.095, 1.097, 1.0971 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, provides:

"Sec. 1.088. (a) Effective March 1, 1992:

"(1) all powers, duties, rights, and obligations of the Texas Department of Health pertaining to the treatment, handling, storage, and disposal of solid waste; the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water; the regulation of on-site sewage disposal systems; and the administration of on-site wastewater treatment research are transferred to the Texas Water Commission;

"(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health pertaining to solid waste, drinking water, on-site sewage disposal systems, and on-site wastewater treatment research are transferred to the Texas Water Commission; and

"(3) all appropriations to the Texas Department of Health pertaining to solid waste, drinking water, on-site sewage disposal systems, and on-site wastewater treatment research are automatically transferred to the Texas Water Commission.

"(b) The Texas Water Commission until August 31, 1993, and after that date the Texas Natural Resource Conservation Commission, is the successor to the Texas Department of Health for the administration and enforcement of laws pertaining to the treatment, handling, storage, and disposal of solid waste, the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water, the regulation of on-site sewage disposal systems, the administration of on-site wastewater treatment research, and the disposal of radioactive substances and shall carry out those duties, responsibilities, and functions as provided by law, including Acts of the 72nd Legislature. Except as expressly provided by law, the rights, powers, and duties delegated to the Texas Department of Health for solid waste, drinking water, and disposal of radioactive substances are assigned to the Texas Water Commission until August 31, 1993, and after that date the Texas Natural Resource Conservation Commission."

"Sec. 1.090. (a) The change in name of the Texas Water Commission, the abolition of the Texas Air Control Board, the transfer of duties from the Texas Department of Health, and the abolition of the Texas Water Well Drillers Board do not affect or impair any act done or obligation, right, license, permit, rule, criterion, standard, or requirement, or penalty accrued or existing under former law, and that law remains in effect for any action concerning such an obligation, right, license, permit, rule, criterion, standard, requirement, or penalty. An action brought or proceeding com-

menced before the effective date of this article, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the effective date of this article.

"(b) Administrative hearings on applications for permits and prehearing proceedings which had commenced prior to the effective date of this article shall not be delayed or continued as a result of this article or any resulting organizational changes.

"Sec. 1.091. Except as otherwise provided by this article, an agency any part of whose duties are transferred by this article to the Texas Natural Resource Conservation Commission shall continue to perform those duties and shall retain its agency name, notwithstanding any change in name to the Texas Natural Resource Conservation Commission in laws amended by this article, until September 1, 1993.

"Sec. 1.092. After September 1, 1993, any reference in law to the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health, acting jointly or in consultation with another agency relating to environmental protection duties that are transferred by this article to the Texas Natural Resource Conservation Commission, is a reference to the Texas Natural Resource Conservation Commission acting alone."

"Sec. 1.094. The officers and employees of the Texas Department of Health, Texas Water Commission, Texas Air Control Board, and Texas Water Well Drillers Board shall cooperate fully with the reorganization.

"Sec. 1.095. The State Purchasing and General Services Commission, to the greatest extent possible, shall locate the offices of the Texas Natural Resource Conservation Commission in a centralized location, taking into account the expiration dates or cancellation clauses of current leases entered into for offices of the agencies abolished and consolidated by this article. The State Purchasing and General Services Commission may not, without the prior written approval of the governor, enter into new leases or extend existing leases for a term beyond September 1, 1993, for the Texas Air Control Board or the Texas Water Commission."

"Sec. 1.097. (a) The Texas Natural Resource Conservation Commission shall appoint an executive director not later than November 1, 1993. Not later than January 1, 1994, the executive director shall appoint the deputy directors under Section 5.222, Water Code, as amended by this article.

"(b) In order to ensure a studied and orderly consolidation of functions and activities within the Texas Natural Resource Conservation Commission and to ensure that state efforts to comply with federal mandates, including the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), are not disrupted, the integration and consolidation of functions and facilities shall proceed according to the timetable provided by this section.

"(c) Not later than March 1, 1994, the executive director shall complete a study and report to the Texas Natural Resource Conservation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives on the desirability and feasibility of integrating agency support functions inherited from the Texas Air Control Board with the similar functions inherited from the Texas Water Commission. Support functions to be studied are accounting and budgeting systems, personnel services, public information and graphic arts, building grounds and vehicle services, and data processing systems used to support these services. Integration of these functions shall be completed to the extent practicable by September 1, 1994.

"(d) Not later than September 1, 1994, the executive director shall report to the Texas Natural Resource Conservation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives on the costs and benefits of consolidating laboratory functions and on the most cost-effective approach to integrating field offices transferred from the Texas Air Control Board and the Texas Water Commission. The study to be submitted by September 1, 1994, shall include a detailed analysis of the experiences of other states in organizing regional offices for a consolidated environmental agency, recommendations for establishing uniform enforcement policies and procedures within the agency, and an analysis of the most cost-effective structure for organizing and using agency attorneys who perform primarily enforcement functions. Recommendations on reorganization or integration of laboratories, regional offices, enforcement policies, and legal enforcement staff shall be implemented to the extent practicable not later than September 1, 1996.

"(e) Not later than January 1, 1995, the executive director shall report to the Texas Natural Resource Conservation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives on the feasibility and desirability of streamlining permit procedures, including combined permits, consolidated permits, and alternative agency organizational structures that would promote more comprehensive and more expeditious review of proposed facilities. The study shall include a

detailed analysis of the experiences of other states in developing streamlined permit procedures or accomplishing multimedia permit reviews, identification of specific problems encountered by permit applicants, identification of types of facilities or projects for which consolidated permits or multimedia review would be most beneficial and identification of state and federal statutory provisions that impede permit streamlining or multimedia review. Analysis of the costs and benefits of consolidating or integrating regulatory data bases and computer systems transferred from the Texas Air Control Board and the Texas Water Commission shall be included in the study. To the extent practicable any recommendations developed shall be implemented not later than September 1, 1997.

"(f) If any reorganization or transfer of responsibilities to another program of the Texas Natural Resource Conservation Commission results in the elimination or downgrading of positions, the percentage of eliminated or downgraded exempt positions and the percentage of eliminated or downgraded classified positions held by former employees of the Texas Air Control Board or the Texas Department of Health may not exceed the percentage those employees represent of the total number of exempt positions or the total number of classified positions within the Texas Natural Resource Conservation Commission at the time of the reorganization.

"Sec. 1.0971. In the consolidation of the state's environmental protection agencies, the Texas Natural Resource Conservation Commission shall provide for a reduction goal of at least 20 percent in the administrative work force that administers the state's environmental laws, as compared to the administrative work force administering the same laws in the 1989–1991 fiscal biennium."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2340, ch. 870, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Vernon's Ann.Civ.St. art. 4477–7, § 3(a).

Library References

Health and Environment ⇐25.5(5), (5.5), (9).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 44, 61 to 153.

§ 361.012. Department's Jurisdiction: Municipal Solid Waste and Industrial Solid Waste

When both municipal solid waste and industrial solid waste, except Class I industrial solid waste that is not routinely collected with municipal solid waste and hazardous waste, are involved in any activity of management of solid waste, the department has jurisdiction over the activity.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Revisor's Note

The revised law omits as unnecessary the source law provision concerning the department's powers and duties.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, §§ 1.163, 7.001.
Vernon's Ann.Civ.St. art. 4477–7, § 3(c).

§ 361.013. Solid Waste Disposal and Transportation Fees

(a) Except as provided by Subsection (e), the department shall charge a fee on solid waste that is disposed of within this state. The fee is the greater of 50 cents per ton or, for compacted solid waste, 50 cents per cubic yard or, for uncompacted solid waste, 10 cents per cubic yard received for disposal at a landfill. The department shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The department may charge comparable fees for other means of solid waste disposal that are used.

(b) The department may raise or lower the fees established under Subsection (a) in accordance with department spending levels established by the legislature.

(c) The department shall charge an annual registration fee to a transporter of solid waste who is required to register with the department under rules adopted by the board of health. The board of health by rule shall adopt a fee schedule. The fee shall be reasonably related to the volume, the type, or both the volume and type of waste transported. The registration fee charged under this subsection may not be less than $25 or more than $500.

(d) The operator of each municipal solid waste facility shall maintain records and report to the department annually on the amount of solid waste that the facility transfers, processes, stores, treats, or disposes of. Each transporter required to register with the department shall maintain records and report to the department annually on the amount of solid waste that the transporter transports. The board of health by rule shall establish procedures for recordkeeping and reporting required under this subsection.

(e) The department may not charge a fee under Subsection (a) for scrap tires that are deposited in a designated recycling collection area at a landfill permitted by the commission or the department or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165 and that are temporarily stored for eventual recycling, reuse, or energy recovery.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, § 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, § 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, § 9.13, eff. Sept. 1, 1991.

Revisor's Note

(1) The source law requires the department to adopt a fee schedule. Since fees are adopted by rule, the revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

(2) The revised law omits the direction that fees collected be deposited to the credit of the general revenue fund because the State Funds Reform Act (Subchapter F, Chapter 404, Government Code) provides that requirement.

Historical and Statutory Notes

Section 9.43 of Acts 1991, 72nd Leg., 1st C.S., ch. 5, provides:

"(a) This article takes effect September 1, 1991. If this article may not take effect on that date under Article III, Section 39, of the Texas Constitution, this article takes effect December 1, 1991.

"(b) This article applies only to fees that become due on or after the effective date of this article. A fee that is collected on or after that date but that became due before that date is governed by the law as it existed when the fee became due, and the former law is continued in effect for this purpose."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1971, 62nd Leg., ch. 863.
Acts 1977, 65th Leg., p. 825, ch. 308, §
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 8, 10.
Acts 1985, 69th Leg., ch. 239, § 54.
Acts 1985, 69th Leg., ch. 457, § 3.
Acts 1985, 69th Leg., ch. 566, § 7.
Acts 1985, 69th Leg., ch. 887, § 1.
Acts 1985, 69th Leg., ch. 931, art. 8, § 2
Acts 1989, 71st Leg., ch. 1143, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 4(K)(2) (4).

Notes of Decisions

Sludge 1

1. Sludge

Where owner of sludge abandoned it and it had no value and it was stipulated that it had no commercial or economic value, no certificate of convenience and necessity from Railroad Commission was required for hauling it. Moore Indus. Disposal, Inc. v. City of Garland (Civ.App.1979) 587 S.W.2d 430, ref. n.r.e.

No certificate of convenience and necessity from State Railroad Commission is required for hauling of material which did not constitute property. Id.

§ 361.014. Use of Solid Waste Fee Revenue

Revenue received by the department under Section 361.013 shall be deposited in the state treasury to the credit of the department. At least half the revenue is dedicated to the department's municipal solid waste permitting and enforcement programs and related support activities, and the balance of the revenue is dedicated to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) provision of technical assistance to local governments concerning solid waste management;

(3) establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

(4) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes);

(5) conduct of a statewide public awareness program concerning solid waste management;

(6) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(7) conduct of research to promote the development and stimulation of markets for recycled waste products;

(8) creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(9) provision of funds for other programs that the board of health may consider appropriate to further the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, § 4, eff. Sept. 1, 1991.

Revisor's Note

The source law requires the fee schedule to be adopted by rule. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1971, 62nd Leg., ch. 863.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 239, § 54.
Acts 1985, 69th Leg., ch. 457, § 3.
Acts 1985, 69th Leg., ch. 566, § 7.
Acts 1985, 69th Leg., ch. 887, § 1.
Acts 1985, 69th Leg., ch. 931, art. 8, § 2.
Acts 1989, 71st Leg., ch. 1143, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 4(K)(3), (4).

§ 361.015. Department's Jurisdiction: Radioactive Waste

The department is the state agency under Chapter 401 that regulates radioactive waste activities not preemptively regulated by the federal government.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law refers to Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes). That statute is revised as Chapter 401 and the revised law reflects this change.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Vernon's Ann.Civ.St. art. 4477-7, § 3(d).

§ 361.0151. Recycling

(a) The department shall establish and administer a waste minimization and recycling office within the department that provides technical assistance to local governments concerning waste minimization and recycling.

(b) The department shall work in conjunction with the Texas Department of Commerce to pursue the development of markets for recycled materials, including composting products.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 4, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:
Acts 1989, 71st Leg., ch. 641, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4D.

§ 361.016. Memorandum of Understanding by Board of Health

The board of health by rule shall adopt:

(1) any memorandum of understanding between the department and any other state agency; and

(2) any revision of a memorandum of understanding.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1987, 70th Leg., ch. 279, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 3(i).

§ 361.017. Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste

(a) The commission is responsible for the management of industrial solid waste and hazardous municipal waste and shall coordinate industrial solid waste activities and hazardous municipal waste activities.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of industrial solid waste and hazardous municipal waste by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

(d) In matters under the commission's jurisdiction, the commission shall consult with:

(1) the department concerning the public health aspects;

(2) the Texas Air Control Board [1] concerning the air pollution control and ambient air quality aspects; and

(3) the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the agency's discretion, for the disposition of enforcement matters under this chapter.

(e) If referral is determined to be mandatory or appropriate, the agency shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The agency shall use all available enforcement options.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.03, eff. Sept. 1, 1991.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2340, ch. 870, § 3.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, §§ 1.163, 7.001.
Vernon's Ann.Civ.St. art. 4477-7, § 3(b).

Law Review Commentaries

Interstate waste: A key issue in resolving the national hazardous waste capacity crisis. B.J. Wynne, III and Terri Hamby, 32 S.Tex.L.Rev. 601 (1991).

Notes of Decisions

Permits for hazardous waste disposal 1

1. **Permits for hazardous waste disposal**

Water Quality Board, replaced by Water Development Board and Department of Water Resources, had exclusive and original jurisdiction to determine question of changed conditions with respect to permit for disposal of hazardous waste materials and, though it lost jurisdiction over subject matter of original order, had jurisdiction to revoke permit on basis of changed conditions after a public hearing even though city had filed an appeal in district court attacking permit as originally issued. South Texas Indus. Services, Inc. v. Texas Dept. of Water Resources (Civ.App.1978) 573 S.W.2d 302, ref. n.r.e.

§ 361.018. Commission's Jurisdiction Over Hazardous Waste Components of Radioactive Waste

(a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation of the manage-

ment of hazardous waste components of radioactive waste under the department's jurisdiction.

(b) The commission shall consult with the department concerning regulation and management under this section.

(c) The commission may not adopt rules or engage in management activities under this section that conflict with state or federal laws and rules concerning the regulation of radioactive waste.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Vernon's Ann.Civ.St. art. 4477-7, § 3(d).

§ 361.019. Approval of Industrial Solid Waste Management in Municipal Solid Waste Facility

(a) Except as provided by Subsection (b), Class I nonhazardous industrial solid waste and small quantities of hazardous waste generated by conditionally exempt small quantity generators, as defined by the commission, may be accepted in a municipal solid waste facility if:

(1) authorized in writing by, or by rule of, the department with the written approval of, or by rule of, the commission; and

(2) the generator of the Class I nonhazardous waste certifies on an appropriate commission form that the waste is not a hazardous waste.

(b) Except as otherwise prohibited by this chapter, nonhazardous industrial solid waste generated by the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals shall be accepted, without authorization by the department or approval of the commission under Subsection (a), in a municipal solid waste facility that has previously been authorized to accept and has accepted Class I nonhazardous industrial solid wastes or Class II industrial solid wastes if the waste contains no free liquids, is not a hazardous waste as defined in Section 361.003, and satisfies other criteria that may be established by commission rule. Until the commission adopts rules establishing additional criteria, generators of this type of waste shall satisfy the two criteria described in this subsection when these wastes are disposed of in municipal solid waste facilities.

(c) Solid waste under the department's jurisdiction may be accepted in an industrial solid waste facility if authorized in writing by the commission with the written approval of the department.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 5, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 703, § 2, eff. Aug. 26, 1991.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, §§ 1.163, 7.001.
Acts 1989, 71st Leg., ch. 536, § 3.
Vernon's Ann.Civ.St. art. 4477-7, § 3(c).

§ 361.020. State Solid Waste Plans

(a) The department shall develop a strategic state solid waste plan for all solid waste under its jurisdiction. The commission shall develop a strategic state solid waste plan for solid waste under its jurisdiction. The state agencies shall coordinate the solid waste plans developed.

(b) A strategic plan shall, for the kinds of waste under the jurisdiction of the agency preparing the plan, identify both short-term and long-term waste management problems, set short-term objectives as steps toward meeting long-term goals, and recommend specific actions to be taken within state times designed to address the identified problems and to achieve the stated objectives and goals. A plan shall reflect the state's preferred waste management methods as stated in Section 361.022 or 361.023 for the kinds of waste under the jurisdiction of the agency preparing the plan.

(c) A strategic plan shall include a short-range planning period of not more than five years, an intermediate planning period of not more than 10 years, and a long-range planning period of 11 years or longer.

(d) Each agency in preparing its strategic plan shall consult with:

(1) the agency's waste minimization, recycling, or reduction division;

(2) the waste reduction advisory committee; and

(3) the interagency coordinating council.

(e) A strategic plan shall be updated every two years. Each agency continually shall collect and analyze data for use in its next updated plan and systematically shall monitor progress toward achieving existing plan objectives and goals. In preparing its updated plan, an agency shall examine previously and newly identified waste management problems, reevaluate its plan objectives and goals, and review and update its planning documents.

(f) Before the department or the commission adopts its strategic plan or makes significant amendments to the plan, the Texas Air Control Board [1] must have the opportunity to comment and make recommendations on the proposed plan or amendments and shall be given such reasonable time to do so as specified by the agency.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 6, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, § 20, eff. Sept. 1, 1991.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Historical and Statutory Notes

Section 22 of the 1991 amendatory act provides:

"The Texas Department of Health and the Texas Water Commission each shall submit an updated strategic solid waste management plan as required by Section 20 of this Act not later than January 1, 1992."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, §§ 1.161, 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Acts 1989, 71st Leg., ch. 1143, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(b).

§ 361.021. Interagency Coordination Council

(a) The interagency coordination council shall coordinate the activities of its member agencies concerning the regulation of solid waste and solid waste management facilities and the enforcement of the applicable solid waste laws and rules.

(b) The council is composed of the executive head, or the executive head's designated representative, of the following agencies:

(1) the commission;

(2) the department;

(3) the Texas Air Control Board;[1] and

(4) the Railroad Commission of Texas.

(c) The commission's representative is the council chairman.

(d) The council shall meet at least quarterly to review the solid waste regulatory and enforcement activities of the previous quarter and coordinate planned activities in the interest of efficiency and cooperation, including:

(1) the consideration of the use of waste exchange programs;

(2) the establishment of a clearinghouse for scientific and engineering information concerning hazardous waste management;

(3) the coordination of hazardous waste research and development activities;

(4) the coordination and development of consistent agency rules relevant to the regulation of hazardous waste activities;

(5) the evaluation of means to assist small quantity hazardous waste generators and affected communities in the effective and safe management and disposal of their regulated waste;

(6) the assessment of any preapplication public interactions with applicants to evaluate their effectiveness and to consider developing rules to incorporate those activities if appropriate;

(7) the consideration of the use of incentives to encourage waste minimization and reusing and recycling waste, and the use of resource recovery and detoxification equipment; and

(8) the evaluation of the feasibility of household hazardous waste collection and disposal programs.

(e) The chairman shall prepare a report summarizing each quarterly meeting. The report shall be submitted for approval by a majority of agencies represented on the council. The report is a public document.

Text of subsec. (f) as added by Acts 1991, 72nd Leg., ch. 296, § 2.02 and Acts 1991, 72nd Leg., ch. 590, § 2

(f) The council shall consult with and advise the pollution prevention council on all matters relating to pollution prevention.

Text of subsec. (f) as added by Acts 1991, 72nd Leg., ch. 303, § 21

(f) The council shall assist the department and the commission in preparing strategic state solid waste management plans required by Section 361.020.

(g) The council shall coordinate efforts to develop and update its member agency management information systems to improve access to high-level planning information.

(h) Not later than February 1 of each odd-numbered year, the council shall report to the legislature on:

(1) the status of its member agencies in meeting stated agency goals;

(2) documented efforts to implement the state's preferred waste management methods as stated in Sections 361.022 and 361.023;

(3) local, regional, interstate, and international waste management planning concerns of interest to the state;

(4) the coordination of federal mandates with state waste management plans; and

(5) new waste management issues.

(i) The council may obtain assistance in preparing its reports from the staffs of its member agencies.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 2.02, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 303, § 21, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 590, § 2, eff. June 16, 1991.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Revisor's Note

The source law refers to the "department of water resources." In 1985, the name of the agency was changed to the Texas Water Commission. The revised law reflects this change and uses "commission" because Section 361.003 defines "commission" to mean the Texas Water Commission.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 566, § 2.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Vernon's Ann.Civ.St. art. 4477-7, § 3(g)(1), (2).

~~§ 361.0211. Pollution Prevention Council~~

(a) The commission, the department, the Texas Air Control Board,[1] and the Railroad Commission of Texas shall each designate an individual to coordinate source reduction and waste minimization efforts and programs in the appointing agency and represent the agency on the pollution prevention council. The individual designated shall report to that individual's executive director or assistant or deputy director.

(b) The pollution prevention council shall coordinate the activities of its represented agencies that concern source reduction and waste minimization to ensure the consistency of and to avoid duplication or conflict in programs.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.03, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, § 3, eff. June 16, 1991.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

§ 361.0215. Waste Reduction Advisory Committee

(a) The waste reduction advisory committee is composed of nine members with a balanced representation of environmental and public interest groups and the regulated community.

(b) The committee shall advise the commission, pollution prevention council, and interagency coordination council on:

(1) matters the council is required to consider under Section 361.021(d);

(2) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;

(3) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;

(4) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and

(5) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, § 2.04, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, § 4, eff. June 16, 1991.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 704, § 1.
~~Vernon's Ann.Civ.St. art. 4477-7, § 3(g)(3).~~

Cross References

Pollution prevention, reduction at source, see § 361.431 et seq.

§ 361.0216. Office of Pollution Prevention

The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction and waste minimization activities of the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, § 2.05, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, § 5, eff. June 16, 1991.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 704, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 3(g)(4).

Cross References

Source reduction and waste minimization assistance, see § 361.509.

§ 361.022. Public Policy Concerning Municipal Solid Waste and Sludge

(a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of municipal solid waste and municipal sludge to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of municipal solid waste or municipal sludge, the methods listed under Subsections (b) and (c) are preferred to the extent economically and technologically feasible and considering the appropriateness of the method to the type of solid waste material or sludge generated, treated, disposed of, or stored.

(b) For municipal solid waste, not including sludge, the following methods are preferred, in the order listed:

(1) source reduction and waste minimization;

(2) reuse or recycling of waste;

(3) treatment to destroy or reprocess waste to recover energy or other beneficial resources if the treatment does not threaten public health, safety, or the environment; or

(4) land disposal.

(c) For municipal sludge, the following methods are preferred, in the order listed:

(1) source reduction and minimization of sludge production and concentrations of heavy metals and other toxins in sludge;

(2) treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of sludge;

(3) marketing and distribution of sludge and sludge products if the marketing and distribution do not threaten public health, safety, or the environment;

(4) applying sludge to land for beneficial use;

(5) land treatment; or

(6) landfilling.

(d) In adopting rules to implement public policy concerning municipal solid waste management, the board of health shall consider the preference of municipal solid waste management methods under this section.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, § 1, eff. Sept. 1, 1991.

Revisor's Note

The source law refers to the department adopting rules. The revised law refers to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, §§ 2, 3.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1987, 70th Leg., ch. 632, §§ 1, 2.
Vernon's Ann.Civ.St. art. 4477–7, §§ 3(e)(3), (4); 4(c).

Cross References

Comprehensive market development study, focus on waste management priorities, see § 361.423.

§ 361.023. Public Policy Concerning Hazardous Waste

(a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of hazardous waste to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of hazardous waste, the following methods are preferred to the extent economically and technologically feasible, in the order listed:

(1) source reduction;

(2) reuse or recycling of waste, or both;

(3) treatment to destroy hazardous characteristics;

(4) treatment to reduce hazardous characteristics;

(5) underground injection; and

(6) land disposal.

(b) Under Subsection (a)(3), on-site destruction is preferred, but it shall be evaluated in the context of other relevant factors such as transportation

~~hazard, distribution of risk, quality of destruction, operator capability, and~~ site suitability.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, § 2, eff. Sept. 1, 1991.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1985, 69th Leg., ch. 566, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 3(e)(1), (2).

Cross References

Factors to be considered in setting fees, see § 361.139.

Law Review Commentaries

Interstate waste: A key issue in resolving the national hazardous waste capacity crisis. B.J. Wynne, III and Terri Hamby, 32 S.Tex.L.Rev. 601 (1991).

§ 361.0231. Public Policy Concerning Adequate Capacity for Industrial and Hazardous Waste

(a) To protect the public health and environment, encourage economic development, and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

(b) "Adequate capacity" is the capacity necessary to manage the industrial and hazardous waste that remains after application, to the maximum extent economically and technologically feasible, of waste reduction techniques.

(c) It is further the state's policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 8, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:
Acts 1989, 71st Leg., ch. 705, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 3(e)(2).

§ 361.0232. Assessment of Commercial Hazardous Waste Management Capacity

Text of section as added by Acts 1991, 72nd Leg., ch. 296, § 1.02 and Acts 1991, 72nd Leg., ch. 703, § 3

(a) Not later than January 1, 1992, the commission shall assess the need for commercial hazardous waste management capacity. In making the assessment, the commission shall consider the need for various technologies for

commercial waste disposal and shall evaluate the need for disposal capacity on a technology-by-technology basis. At a minimum, the commission shall assess separately the need for metals recovery, solvent recovery, other recovery such as nonsolvent organic recovery and acid regeneration, incineration of liquids, incineration of sludge or solids, energy recovery, aqueous inorganic treatment, aqueous organic treatment, other treatment such as neutralization and gas incineration, sludge treatment, stabilization, land treatment, landfill, deep well injection, and other disposal such as ocean dumping and depositing wastes in salt mines. The commission shall adopt rules based on the assessment.

(b) In evaluating need and drafting rules under this section, the commission shall consider:

(1) demand for commercial hazardous waste capacity in the state;

(2) availability of commercial hazardous waste capacity to small quantity generators;

(3) demand for noncommercial hazardous waste capacity in the state;

(4) demand for nonhazardous waste capacity in the state;

(5) permitted commercial hazardous waste capacity in the state;

(6) permitted commercial nonhazardous waste capacity in the state;

(7) anticipated waste reduction capability;

(8) potential increases in substances defined as hazardous waste;

(9) the preferences established by Section 361.023;

(10) the effect of any rules adopted under this section on the status of federal funds and any federally delegable programs;

Text of subd. (11) as added by Acts 1991, 72nd Leg., ch. 296, § 1.02

(11) the risks associated with the transportation of hazardous waste to the facility;

Text of subd. (11) as added by Acts 1991, 72nd Leg., ch. 703, § 3 and subd. (12) as added by Acts 1991, 72nd Leg., ch. 296, § 1.02

(12) research on new technology; and

Text of subd. (12) as added by Acts 1991, 72nd Leg., ch. 703, § 3 and subd. (13) as added by Acts 1991, 72nd Leg., ch. 296, § 1.02

(13) any other relevant information.

(c) In developing this assessment, the commission shall consider the need to maintain an appropriate reserve capacity in the state to assure continuity of hazardous waste management and an effective enforcement program while encouraging waste reduction and recycling and recovery.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.02, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 3, eff. Aug. 26, 1991.

For text of section as added by Acts 1991, 72nd Leg., ch. 336, § 1, see § 361.0232, post

Historical and Statutory Notes

Section 1.24 of Acts 1991, 72nd Leg., ch. 296 provides:

"The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commercial hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt all rules, except rules required under Section 1.02 or 1.26 of this article, necessary to carry out the provisions of this article. The Texas Water Commission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.02 or 1.26 of this article, as expeditiously as possible, but no later than 120 days after the effective date of this Act. Pending adoption of all such rules, the commission and the board may not conduct any public hearing on a permit. The commission and the board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. Permits granted after the effective date of this article must comply fully with all rules adopted by the commission and the board pursuant to this article. For purposes of this section, 'commercial hazardous waste management facility' does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratorium does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity."

Section 1.25(f), (g) of Acts 1991, 72nd Leg., ch. 296 provides:

"(f) To enable the Texas Water Commission to meet the deadlines imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, and imposed by Section 1.25 of this article, rules required to be adopted under those provisions are not subject to Texas Employment Commission review.

"(g) To enable the Texas Water Commission to meet the deadline imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, a purchase by the commission of services necessary to prepare the assessment and rules required by that section is exempt from the purchasing requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes)."

Section 3.01 of Acts 1991, 72nd Leg., ch. 296 provides:

"This Act may be referred to as the Waste Reduction Policy Act of 1991."

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.030 amended § 1.25 of Acts 1991, 72nd Leg., ch. 296 by adding (h) to read as follows:

"It is the policy of this state to encourage waste minimization through recycling. Therefore, the provisions of this article do not apply to any hazardous waste management facility that, before or during a recycling process, stores hazardous waste if the hazardous waste management facility engages only in storage incidental to a recycling process that does not include any treatment or disposal of hazardous waste by incineration, landfilling, or deep well injection on site. This subsection only applies to applications pending at the Texas Water Commission on the effective date of this article and does not apply to any commercial hazardous waste management facilities that burn waste-derived fuel."

§ 361.0232. Hazardous Waste Generated in Foreign Country

Text of section as added by Acts 1991, 72nd Leg., ch. 336, § 1

(a) Except as otherwise provided by this section, a person may not receive, transport, or cause to be transported into this state, for the purpose of treatment, storage, or disposal in this state, hazardous waste generated in a country other than the United States.

(b) This section may not be construed or applied in a manner that interferes with the authority of the federal government to regulate commerce with foreign nations and among the several states provided by Article I, Section 8, Clause 3, of the United States Constitution.

(c) This section does not apply to a person who transports or receives material from a country other than the United States for:

(1) recycling or reuse of the material; or

(2) use of the material as a feedstock or ingredient in the production of a new product.

(d) This section does not apply to waste transported or received for treatment, storage, or disposal at a hazardous waste management facility that is owned by the generator of the waste or by a parent, subsidiary, or affiliated corporation of the generator.

(e) This section does not apply to waste received by:

(1) a producer of the product or material from which the waste is generated; or

(2) a parent, subsidiary, or affiliated corporation of such producer.

(f) This section does not apply to waste generated in Mexico at an approved maquiladora facility to the extent that such waste:

(1) was generated as a result of the processing or fabrication of materials imported into Mexico from Texas on a temporary basis; and

(2) is required to be re-exported to the United States under Mexican law.

Added by Acts 1991, 72nd Leg., ch. 336, § 1, eff. Sept. 1, 1991.

For text of section as added by Acts 1991, 72nd Leg., ch. 296, § 1.02 and Acts 1991, 72nd Leg., ch. 703, § 3, see § 361.0232, ante

§ 361.0233. Assessment of Commercial Nonhazardous Solid Waste Disposal Capacity

(a) Not later than March 1, 1996, the commission in consultation with the department shall assess the need for commercial nonhazardous solid waste disposal capacity in the state. In making the assessment, the commission and department shall consider the need for various technologies for commercial nonhazardous waste disposal and shall evaluate the need for disposal capacity on a technology-by-technology basis. The commission and the department shall adopt rules based on the assessment.

(b) In evaluating need and drafting rules under this section, the commission and department shall consider:

(1) demand for nonhazardous waste capacity in the state;

(2) permitted commercial hazardous waste capacity in the state;

(3) permitted commercial nonhazardous waste capacity in the state;

(4) anticipated waste reduction capability;

(5) potential increases in substances defined as hazardous waste;

(6) the preferences established by Section 361.022;

(7) the effect of any rules adopted under this section on the status of federal funds and any federally delegable programs;

(8) research on new technology; and

(9) any other relevant information.

(c) The commission and department shall also consider:

(1) the continued viability of industrial solid waste management in municipal solid waste facilities, under Section 361.019;[1]

(2) the geographic location of all commercial disposal facilities relative to the location of industrial solid waste generators; and

(3) the risks associated with the transportation of industrial solid waste to the facility.[2]

Added by Acts 1991, 72nd Leg., ch. 296, § 1.02, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 3, eff. Aug. 26, 1991.

[1] Acts 1991, 72nd Leg., ch. 703, § 3 contained "and" following "361.019;".

[2] Subsection (c)(3) added by only Acts 1991, 72nd Leg., ch. 296, § 1.02.

Historical and Statutory Notes

Section 1.24 of Acts 1991, 72nd Leg., ch. 296 provides:

"The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commercial hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt all rules, except rules required under Section 1.02 or 1.26 of this article, necessary to carry out the provisions of this article. The Texas Water Commission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.02 or 1.26 of this article, as expeditiously as possible, but no later than 120 days after the effective date of this Act. Pending adoption of all such rules, the commission and the board may not conduct any public hearing on a permit. The commission and the board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. Permits granted after the effective date of this article must comply fully with all rules adopted by the commission and the board pursuant to this article. For purposes of this section, 'commercial hazardous waste management facility' does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratorium does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity."

Section 1.25(f), (g) of Acts 1991, 72nd Leg., ch. 296 provides:

"(f) To enable the Texas Water Commission to meet the deadlines imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, and imposed by Section 1.25 of this article, rules required to be adopted under those provisions are not subject to Texas Employment Commission review.

"(g) To enable the Texas Water Commission to meet the deadline imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, a purchase by the commission of services necessary to prepare the assessment and rules required by that section is exempt from the purchasing requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes)."

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.030 amended § 1.25 of Acts 1991, 72nd Leg., ch. 296 by adding (h) to read as follows:

"It is the policy of this state to encourage waste minimization through recycling. Therefore, the provisions of this article do not apply to any hazardous waste management facility that, before or during a recycling process, stores hazardous waste if the hazardous waste management facility engages only in storage incidental to a recycling process that does not include any treatment or disposal of hazardous waste by incineration, landfilling, or deep well injection on site. This subsection only applies to applications pending at the Texas Water Commission on the effective date of this article and does not apply to any commercial hazardous waste management facilities that burn waste-derived fuel."

§ 361.0234. Rules; Update of Rules and Assessments

(a) To expedite the consideration of permits for technologies that an assessment prepared under Section 361.0232 or 361.0233 determines to be most needed, the rules adopted by the commission or department shall provide for a permitting process that encourages the development of new and innovative disposal technologies, grants preferences considering the hierarchies established by Sections 361.022 and 361.023, emphasizes waste reduction efforts, and encourages applicants for permits for hazardous waste management facilities to include recycling and recovery components where appropriate.

(b) The commission and department, as appropriate, shall update the assessments and related rules at least every two years. In preparing an update of the assessment, the commission and department shall consider source reduction and waste minimization plans and reports submitted under Subchapter N.[1]

Added by Acts 1991, 72nd Leg., ch. 296, § 1.02, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 3, eff. Aug. 26, 1991.

[1] The second sentence of subsec. (b) added only by Acts 1991, 72nd Leg., ch. 296, § 1.02.

Historical and Statutory Notes

Section 1.24 of Acts 1991, 72nd Leg., ch. 296 provides:

"The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commercial hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt all rules, except rules required under Section 1.02 or 1.26 of this article, necessary to carry out the provisions of this article. The Texas Water Commission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.02 or 1.26 of this article, as expeditiously as possible, but no later than 120 days after the effective date of this Act. Pending adoption of all such rules, the commission and the board may not conduct any public hearing on a permit. The commission and the board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. Permits granted after the effective date of this article must comply fully with all rules adopted by the commission and the board pursuant to this article. For purposes of this section, 'commercial hazardous waste management facility' does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratorium does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity."

Section 1.25(f), (g) of Acts 1991, 72nd Leg., ch. 296 provides:

"(f) To enable the Texas Water Commission to meet the deadlines imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, and imposed by Section 1.25 of this article, rules required to be adopted under those provisions are not subject to Texas Employment Commission review.

"(g) To enable the Texas Water Commission to meet the deadline imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, a purchase by the commission of services necessary to prepare the assessment and rules required by that section is exempt from the purchasing requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes)."

Sections 1.26 to 1.28 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.26. (a) To provide accountability and predictability in the processing of permit applications, the Texas Water Commission shall review its permit application processing procedures to determine the causes of delay, if any, in those activities. After identifying any obstacles to timely determination on permit applications, the commission shall adopt reasonable permit processing and hearing timeta-

bles for permits that are determined to be administratively complete, with specific deadlines for each major step in the processing under the control of the commission and hearing procedures. Deadlines under the control of the commission do not include time the commission waits for the receipt of information from an applicant in order to properly review the application. Those deadlines under the control of the commission shall be met unless the executive director finds that the delay is necessary and lists the reasons that the deadlines cannot be met. It is the legislature's intent that permit applicants whose applications address technologies that are most needed as determined under Section 361.0234, Health and Safety Code, as added by this article, receive an ultimate determination on an administratively complete application, favorable or unfavorable, within two years of the date the application is determined to be administratively complete, excluding time not under the control of the commission.

"(b) As part of this study, the Texas Water Commission shall consider mechanisms for encouraging applicants and local communities to cooperate with each other in the siting of new hazardous waste management facilities. The commission shall, at a minimum, consider the creation of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant provides opportunities for citizens to ask questions about the permit application or the draft permit, and any necessary revisions to the local review process provided by Section 361.063, Health and Safety Code. The commission shall report its findings, recommendations, and a summary of the rules adopted under Subsection (a) of this section to the legislature before January 1, 1993.

"Sec. 1.27. If necessary, the Texas Water Commission, the Texas Air Control Board, and the Texas Department of Health shall enter into memoranda of understanding to establish procedures and carry out this article.

"Sec. 1.28. If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in implementing the application procedures required under this article, the appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency."

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.030 amended § 1.25 of Acts 1991, 72nd Leg., ch. 296 by adding (h) to read as follows:

"It is the policy of this state to encourage waste minimization through recycling. Therefore, the provisions of this article do not apply to any hazardous waste management facility that, before or during a recycling process, stores hazardous waste if the hazardous waste management facility engages only in storage incidental to a recycling process that does not include any treatment or disposal of hazardous waste by incineration, landfilling, or deep well injection on site. This subsection only applies to applications pending at the Texas Water Commission on the effective date of this article and does not apply to any commercial hazardous waste management facilities that burn waste-derived fuel."

§ 361.024. Rules and Standards

(a) The board of health and the commission may each adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of the solid waste under their respective jurisdictions under this chapter.

(b) In developing rules concerning hazardous waste, the commission shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources.

(c) The minimum standards set by the commission for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.

(d) Rules adopted by the commission under Section 361.036 and Sections 361.097–361.108 for solid waste facilities may differ according to the type or hazard of hazardous waste managed and the type of waste management method used.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

(1) The source law authorizes the department to adopt rules. The revised law assigns that power to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

(2) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.025. Exempt Activities

(a) The commission and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities that are associated with oil and gas exploration, development, and production and are therefore exempt from regulation under this chapter.

(b) The list shall be adopted by rule and amended as necessary.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

(1) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

(2) The source law, effective September 1, 1985, states that the list prepared by the commission and the Railroad Commission of Texas is a rule as defined by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the reference to APTRA, effective in 1976, as unnecessary because APTRA applies without an express statement to that effect.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1985, 69th Leg., ch. 931, art. 8, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 3(f).

§ 361.026. Assistance Provided by Department and Commission

(a) The department and the commission may individually or jointly:

(1) provide educational, advisory, and technical services concerning solid waste management to other state agencies, regional planning agencies, local governments, special districts, institutions, and individuals; and

(2) assist other state agencies, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for:

(A) the development of solid waste facilities and management programs; and

(B) research to improve solid waste management.

(b) The department or the commission individually may engage in the programs and activities under this section only as the participation by it concerns the management and control of the solid waste under its jurisdiction.

(c) If the department and the commission do not participate jointly, each shall coordinate efforts undertaken individually so that separate but similar programs and activities are compatible.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Vernon's Ann.Civ.St. art. 4477-7, § 4(h).

§ 361.027. Training of Solid Waste Technicians

(a) The department and the commission may each:

(1) develop a program to train solid waste technicians to improve the competency of those technicians; and

(2) issue letters of competency.

(b) The owner or operator of a solid waste facility is encouraged to employ as site manager a solid waste technician holding a letter of competency from the appropriate agency.

(c) The department and the commission may each:

(1) prescribe standards of training required for the program;

(2) determine the duration of the letter of competency;

(3) award one or more categories of letters of competency with each category reflecting a different degree of training or skill;

(4) require a reasonable, nonrefundable fee, in an amount determined from time to time by the agency, to be paid by participants, deposited to the credit of the general revenue fund, and used to administer the program;

(5) extend or renew letters of competency issued by the agency; and

(6) withdraw a letter of competency for good cause, which may include a violation of this chapter or a rule of the agency concerning the technician's duties and responsibilities.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The revised law omits the direction that fees collected be deposited in the general revenue fund for the reason stated in Revisor's Note (2) under Section 361.013.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Vernon's Ann.Civ.St. art. 4477-7, § 4(g).

§ 361.028. Industrial Solid and Hazardous Waste Materials Exchange

(a) The commission shall establish an industrial solid and hazardous waste materials exchange that provides for the exchange, between interested persons, of information concerning:

(1) particular quantities of industrial solid or hazardous waste available in this state for recovery;

(2) persons interested in acquiring certain types of industrial solid or hazardous waste for purposes of recovery; and

(3) methods for the treatment and recovery of industrial solid or hazardous waste.

(b) The industrial solid and hazardous waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of information described by Subsection (a) for similar information from a program operated in another state.

(c) The commission may contract for a private person or public entity to establish or operate the industrial solid and hazardous waste materials exchange.

(d) The commission may prescribe rules concerning the establishment and operation of the industrial solid and hazardous waste exchange, including the setting of a necessary subscription fee to offset the cost of participation in the program.

(e) The commission may seek grants and contract support from federal and other sources to the extent possible and may accept gifts to support its purposes and programs.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law refers to the acceptance of "gifts and donations" by the commission. The reference to "donations" is omitted from the revised law because "donations" is included in the meaning of "gifts."

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1987, 70th Leg., ch. 139, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4A.

§ 361.029. Collection and Disposal of Household Materials That could be Classified as Hazardous Waste

(a) The board of health and the commission shall provide by rule for interested persons to engage in activities that involve the collection and disposal of household materials that could be classified as hazardous waste.

(b) The rules must specify the necessary requirements concerning the training of persons involved in the collection and disposal of those household materials.

(c) A person is not liable for damages as a result of any act or omission in the course of advertising, promoting, or distributing educational materials concerning the collection or disposal of those household materials in accordance with the rules. This subsection does not preclude liability for damages as a result of gross negligence of or intentional misconduct by the person.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1987, 70th Leg., ch. 279, § 8.
Vernon's Ann.Civ.St. art. 4477-7, § 4(n).

§ 361.030. Federal Funds

The department or commission may individually or jointly accept funds from the federal government for purposes concerning solid waste management and spend money received from the federal government for those purposes in the manner prescribed by law and in accordance with agreements as are necessary and appropriate between the federal government and the agency.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Vernon's Ann.Civ.St. art. 4477-7, § 4(h).

~~§ 361.031. Financial Assistance to Local Governments~~

(a) The department and the commission may administer and spend state funds provided to them by legislative appropriations, or otherwise, to make grants to local governments for:

(1) solid waste planning;

(2) installation of solid waste facilities; and

(3) administration of solid waste programs.

(b) The grants made under this chapter shall be distributed in a manner determined by the state agency to which the appropriation is made.

(c) The amount of financial assistance granted by the state through the department or commission to a local government under this chapter must be matched by local government funds at least in equal amounts.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, § 1 to 8, 10.
Vernon's Ann.Civ.St. art. 4477-7, § 4(i).

§ 361.032. Inspections; Right of Entry

(a) The department and the commission are each authorized to inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of the solid waste under the agency's jurisdiction.

(b) Agents or employees of the department, the commission, or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control.

(c) Agents or employees may not enter private property with management in residence without notifying the management, or the person in charge at the time, of their presence and presenting proper credentials.

(d) Agents or employees inspecting an establishment shall observe the establishment's rules on safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

(1) The source law refers to "incorporated city or town." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

(2) The source law refers to "rules and regulations." The reference to "regulations" is omitted from the revised law because under the definitions section of the Code Construction Act (Section 311.005, Government Code) a rule includes a regulation.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 1.165.
Vernon's Ann.Civ.St. art. 4477-7, §§ 4(d); 7(a).

Cross References

Registry and cleanup of certain hazardous waste facilities, investigations, see § 361.182.

§ 361.033. Inspections Required by Environmental Protection Agency

(a) The commission shall inspect regulated hazardous waste management and disposal facilities periodically as required by the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(b) In supplementing the inspections under Subsection (a), the commission shall give priority to inspecting and reinspecting those facilities, including generators, considered most likely to be in noncompliance or most likely to pose an environmental or public health threat, regardless of whether the facilities are characterized as major or non-major facilities.

(c) The commission may randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the United States Environmental Protection Agency.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 566, § 8.
Acts 1985, 69th Leg., ch. 795, § 1.165.
Vernon's Ann.Civ.St. art. 4477-7, § 7(c).

Cross References

Registry and cleanup of certain hazardous waste facilities, investigations, see § 361.182.

§ 361.034. Reports

(a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed industrial solid waste and hazardous waste fees authorized under Subchapter D[1] and related activities to determine the appropriateness of the fee structures;

(2) an evaluation of progress made in accomplishing the state's public policy concerning the preference of waste management methods under Section 361.023;

(3) projections of the volume of waste by type of waste, disposition of waste, and remaining capacity or capacity used for the treatment and disposal of the waste; and

(4) projections of the availability of adequate capacity in this state for the management of all types of hazardous waste generated within the state and a report of the amounts, types, and sources of hazardous waste imported into and exported from the state in the previous year.

(b) To develop the reports required under Subsection (a), the commission shall adopt rules requiring a person who generates, stores, treats, or disposes of industrial solid waste or hazardous waste to respond to a periodic survey detailing projections of waste volumes generated and handled, assumptions used as the basis for these projections, disposition, and remaining capacity, concerning a surveyed facility owned or operated by the person.

(c) The report due January 1, 1993, shall also include an evaluation of fees on products authorized under Section 361.138. This evaluation shall include an assessment of the needs of the state for the remediation of contaminated disposal sites identified under Subchapter F, Chapter 361, Health and Safety Code, the sources of contamination at these sites, and the revenues available under existing authority to apply to remediation efforts. The report shall include recommendations for possible additions to products subject to fees under Section 361.138 or other revenue measures which will adequately and equitably apportion the costs of remediation of contaminated sites. In making this evaluation, the commission shall consult with members of the regulated community, other businesses or industries subject to or affected by potential recommendations, and environmental or other public interest organizations.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 9, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, § 12, eff. Aug. 26, 1991.

[1] Section 361.131 et seq.

Revisor's Note

(1) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

(2) The revised law omits as executed the source law provision requiring that the report to the legislature and the governor be submitted on January 1, 1987.

(3) The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

(4) The revised law omits as executed the source law provision requiring that the first report be submitted by March 1, 1986.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 566, § 2.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1989, 71st Leg., ch. 703, § 2.
Acts 1989, 71st Leg., ch. 1144, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 3(h).

§ 361.035. Records and Reports; Disposal of Hazardous Waste

(a) The commission by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain records and to submit to the commission reports necessary for the commission to determine the amount of hazardous waste disposal.

(b) The commission by rule shall establish the date on which a report required by this section is to be submitted.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

(1) The source law refers to the "board," which is a reference to the Texas Water Development Board. As explained in the revisor's note under Section 361.021, the responsibilities of the department of water resources, of which the Texas Water Development Board was the rule-making body, were transferred to the Texas Water Commission. Therefore, the revised law substitutes "commission" for "board."

(2) The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1987, 70th Leg., ch. 279, § 18.
Vernon's Ann.Civ.St. art. 4477-7, § 13a.

§ 361.036. Records and Manifests Required; Class I Industrial Solid Waste or Hazardous Waste

The commission by rule shall require a person who generates, transports, processes, stores, or disposes of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that the waste is transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

Cross References

State liability for indemnification, see V.T.C.A. Civil Practice and Remedies Code, § 104.002.

§ 361.037. Access to Hazardous Waste Records

(a) Authorized agents or employees of the commission have access to and may examine and copy during regular business hours any records pertaining to hazardous waste management and control.

(b) Except as provided by this subsection, records copied under Subsection (a) are public records. If the owner of the records shows to the satisfaction of the executive director that the records would divulge trade secrets if made public, the commission shall consider the copied records confidential.

(c) Subsection (b) does not require the commission to consider the composition or characteristics of solid waste being processed, stored, disposed of, or otherwise handled to be held confidential.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 566, § 8.
Acts 1985, 69th Leg., ch. 795, § 1.165.
Vernon's Ann.Civ.St. art. 4477-7, § 7(b), (d).

Cross References

Registry and cleanup of certain hazardous waste facilities, investigations, see § 361.182.

§ 361.038. Annual Inspection Report

(a) In January of each year, the commission shall publish an annual inspection report that:

(1) summarizes the commission's inspection strategy and the results of inspections conducted during the previous fiscal year; and

(2) lists each hazardous waste treatment, storage, and disposal facility not inspected.

(b) The report must identify each hazardous waste facility inspected and include a list of:

(1) each facility that is in compliance with hazardous waste regulations, including each facility with an exemplary record of compliance over the preceding three years;

(2) each facility that has only minor or clerical violations; and

(3) each facility that has substantive, nonclerical violations, including each facility that has been adjudicated during the preceding three years to have committed substantive, nonclerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial endangerment to the public health and safety or the environment.

(e) The report must identify the substantive, nonclerical violations and either summarize corrective actions or describe the status of unresolved violations.

(d) The report shall be submitted to the governor, lieutenant governor, and speaker of the house. The commission shall provide notice of the report's availability by publishing notice in the Texas Register.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 566, § 8.
Acts 1985, 69th Leg., ch. 795, § 1.165.
Vernon's Ann.Civ.St. art. 4477-7, § 7(e), (f), (g).

§ 361.039. Construction of Other Laws

Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the department, the commission, the Texas Air Control Board,[1] or a local government in performing the powers, functions, and duties vested in those governmental entities by other law.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 13.
Acts 1985, 69th Leg., ch. 567, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 14.

[Sections 361.040 to 361.060 reserved for expansion]

SUBCHAPTER C. PERMITS

§ 361.061. Permits; Solid Waste Facility

Except as provided by Section 361.090 with respect to certain industrial solid waste, the department and the commission may each require and issue permits authorizing and governing the construction, operation, and maintc-

nance of the solid waste facilities used to store, process, or dispose of the solid waste over which it has jurisdiction under this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Section 2.36 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, provides:

"(a) A person who holds a construction permit under Section 382.051, Health and Safety Code, as it existed before the effective date of this article, and whose application for an operating permit under Section 382.054, Health and Safety Code, as it existed before the effective date of this article, is pending on December 1, 1991, may operate the facility or source for which the permit was issued as provided by Section 382.0511, Health and Safety Code, as added by this article, subject to the permitting and review and renewal requirements of Sections 382.054 and 382.055, Health and Safety Code, as amended by this article.

"(b) Any person required to obtain a federal operating permit under Section 382.054, Health and Safety Code, as amended by this article, who has commenced construction on or operated a facility or source for which that permit is required under a permit, special permit, exemption, or other authorization issued or applicable under Sections 361.061, 382.051, 382.054, 382.055, or 382.057, Health and Safety Code, as they existed before the effective date of this article, or under Sections 382.0511 and 382.0518, Health and Safety Code, as added by this article, and any regulations issued under those sections, may continue constructing or operating the facility or source for which the federal operating permit is required under the permit, special permit, exemption, or other authorization, subject to any applicable permit review and renewal requirement of Section 382.055, Health and Safety Code, as amended by this article, during the time between the date on which the permit requirement of Section 382.054, Health and Safety Code, as amended by this article, takes effect and the date on which the person obtains the required federal operating permit if the person timely files an application for a federal operating permit.

"(c) An application for a federal operating permit required by Section 382.054, Health and Safety Code, as amended by this article, must be submitted to the Texas Natural Resource Conservation Commission not later than the latter of:

"(1) one year after the date on which the executive director of the Texas Natural Resource Conservation Commission publishes in the Texas Register notice of approval of the state's permitting program under Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) by the Administrator of the United States Environmental Protection Agency; or

"(2) one year after the date on which the facility or source for which a permit is required becomes subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549)."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 239, § 54.
Acts 1985, 69th Leg., ch. 457, § 1.
Acts 1985, 69th Leg., ch. 464, § 2.
Acts 1985, 69th Leg., ch. 566, §§ 4, 5.
Acts 1987, 70th Leg., ch. 279, §§ 3 to 6.
Acts 1987, 70th Leg., ch. 299, § 1.
Acts 1987, 70th Leg., ch. 638, §§ 7 to 9.
Acts 1987, 70th Leg., ch. 781, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e).

Library References

Health and Environment ⇐25.5(5), (5.5), (9).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 44, 61 to 153.

Notes of Decisions

Hearing 1

1. Hearing

Where condition attached to permit to develop solid waste disposal facility merely required that attachment, which was already included with permittee's original application pursuant to Department of Health rules, be revised to comply with Commissioner's final order, but allowed excavation to begin once that revision was filed with Commissioner, without granting contestants further opportunity for hearing, contestants were not denied due process. Browning-Ferris, Inc. v. Johnson (App.1982) 644 S.W.2d 123, ref. n.r.e.

§ 361.062. Compatibility with County's Plan

(a) Before the department issues a permit to construct, operate, or maintain a solid waste facility to process, store, or dispose of solid waste in a county that has a local solid waste management plan approved by the board of health under Chapter 363 (Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act), the department must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local solid waste management plan.

(b) Until a local solid waste management plan is approved by the board of health and adopted by rule, the department may not consider the plan and its contents in the review of an application for a solid waste facility permit.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law refers to Article 4477-7c, Vernon's Texas Civil Statutes. That statute is revised as Chapter 363 and the revised law reflects this change.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1987, 70th Leg., ch. 279, § 9.
Vernon's Ann.Civ.St. art. 4477-7, § 4(o).

Notes of Decisions

In general 1

1. In general

Department of Health could consider any recommendation or action taken by the governing body of a city or county within whose jurisdiction proposed landfill site is located concerning proper land use and the propriety of application for permit for solid waste disposal facility. Browning-Ferris, Inc. v. Texas Dept. of Health (App.1981) 625 S.W.2d 764, ref. n.r.e.

§ 361.063. Preapplication Local Review Committee Process

(a) The department and the commission shall encourage applicants for solid waste facilities under the jurisdiction of the department or for hazardous waste management facilities to enter into agreements with affected persons to resolve issues of concern. During this process, persons are encour-

aged to identify issues of concern and work with the applicant to resolve those issues.

(b) The agreement shall be made through participation in a local review committee process that includes a good faith effort to identify issues of concern, describe them to the applicant, and attempt to resolve those issues before the hearing on the permit application begins. A person is not required to be a local review committee member to participate in a local review committee process.

(c) If an applicant decides to participate in a local review committee process, the applicant must file with the department or commission, as appropriate, a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. A copy of the notice shall be delivered to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be delivered to the mayor of the municipality. The filing of the notice with the department or commission, as appropriate, initiates the preapplication review process.

(d) Not later than the 15th day after the date the notice of intent is filed under Subsection (c), the local review committee shall be appointed. The board of health and commission shall adopt rules concerning the composition and appointment of a local review committee.

(e) The local review committee shall meet not later than the 21st day after the date the notice of intent is filed under Subsection (c). The preapplication review process must continue for 90 days unless the process is shortened or lengthened by agreement between the applicant and the local review committee.

(f) The commission, as appropriate, may award to a person, other than the applicant, who has participated in the local review committee process under this section concerning an application for a hazardous waste management facility all or a part of the person's reasonable costs for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing concerning issues that are raised by the person in the local review committee process and that are unresolved at the beginning of the hearing on the permit application. The total amount of awards granted to all persons under this subsection concerning an application may not exceed $25,000. In determining the appropriateness of the award, the commission shall consider whether:

(1) the evidence or analysis provided by the studies, reports, and witnesses is significant to the evaluation of the application;

(2) the evidence or analysis would otherwise not have been provided in the proceeding; and

(3) the local review committee was established in accordance with commission rules.

(g) Except as provided by Subsection (k), if an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs under Subsection (f), shall waive any requirement that the person affected has participated in a local review committee process.

(h) Except as provided by Subsection (k), costs awarded by the commission under Subsection (f) are assessed against the applicant. Rules shall be adopted for the award of those costs. Judicial review of an award of costs is under the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

(i) A local review committee shall:

(1) interact with the applicant in a structured manner during the preapplication review stage of the permitting process and, if necessary, during the technical review stage of the permitting process to raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions.

(j) The applicant must submit the report required under Subsection (i)(2) to the agency with its permit application.

(k) If an applicant, after reasonable efforts to determine if local opposition exists to its proposed facility, including discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or because a local review committee is not established despite the applicant's good faith efforts, costs may not be assessed against the applicant under Subsection (f).

(*l*) This section does not apply to:

(1) a solid waste or hazardous waste management facility for which an application was filed, or that was authorized to operate, as of September 1, 1985;

(2) amendments to applications that were pending on September 1, 1987; or

(3) changes in waste storage or processing operations at existing sites at which waste management activities were being conducted on September 1, 1987.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

(1) The source law refers to "city." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

(2) The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

(3) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

(4) The source law refers to the "effective date of such paragraph." The revised law substitutes "September 1, 1985," which is the effective date of the provision.

(5) The source law refers to amendments to "pending applications," and to existing sites at which waste management activities are "already being conducted." The revised law adds "on September 1, 1987," which is the effective date of the provision.

(6) In referring to an award of costs, the source law is inconsistent regarding which agency has authority. Since costs are awarded to an applicant for a hazardous waste management facility, which is under the jurisdiction of the commission, the revised law refers only to the commission.

Historical and Statutory Notes

Sections 1.26 to 1.28 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.26. (a) To provide accountability and predictability in the processing of permit applications, the Texas Water Commission shall review its permit application processing procedures to determine the causes of delay, if any, in those activities. After identifying any obstacles to timely determination on permit applications, the commission shall adopt reasonable permit processing and hearing timetables for permits that are determined to be administratively complete, with specific deadlines for each major step in the processing under the control of the commission and hearing procedures. Deadlines under the control of the commission do not include time the commission waits for the receipt of information from an applicant in order to properly review the application. Those deadlines under the control of the commission shall be met unless the executive director finds that the delay is necessary and lists the reasons that the deadlines cannot be met. It is the legislature's intent that permit applicants whose applications address technologies that are most needed as determined under Section 361.0234, Health and Safety Code, as added by this article, receive an ultimate determination on an administratively complete application, favorable or unfavorable, within two years of the date the application is determined to be administratively complete, excluding time not under the control of the commission.

"(b) As part of this study, the Texas Water Commission shall consider mechanisms for encouraging applicants and local communities to cooperate with each other in the siting of new hazardous waste management facilities. The commission shall, at a minimum, consider the creation of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant provides opportunities for citizens to ask questions about the permit application or the draft permit, and any necessary revisions to the local review process provided by Section 361.063, Health and Safety Code. The commission shall report its findings, recommendations, and a summary of the rules adopted under Subsection (a) of this section to the legislature before January 1, 1993.

"Sec. 1.27. If necessary, the Texas Water Commission, the Texas Air Control Board, and the Texas Department of Health shall enter into memoranda of understanding to establish procedures and carry out this article.

"Sec. 1.28. If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in implementing the application procedures required under this article, the appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 5.
Acts 1987, 70th Leg., ch. 279, § 6.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(12).

§ 361.0635. Preapplication Meeting

(a) If requested by a person who intends to file a permit application and with approval of the agencies concerned, the department, the commission,

and the Texas Air Control Board [1] shall provide the person an opportunity to meet jointly with one or more staff members of each of the agencies concerned to discuss the permit application that the person intends to file.

(b) The person must make the request in writing to the state agency with jurisdiction over the permit application that the person intends to file, and that agency shall coordinate a meeting held under this section.

(c) A meeting under this section must be held before the person files the permit application with the appropriate state agency.

(d) The department, the commission, and the Texas Air Control Board shall enter into memoranda of understanding, as necessary, to establish procedures and carry out this section.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 10, eff. Sept. 6, 1990.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 583, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(p).

§ 361.064. Permit Application Form and Procedures

(a) If the department or the commission exercises the power to issue permits for solid waste facilities under this subchapter, the agency exercising the power, to the extent not otherwise provided by this subchapter, shall prescribe:

(1) the form of and reasonable requirements for the permit application; and

(2) the procedures for processing the application.

(b) Each state agency with the authority to permit a solid waste management facility shall provide a thorough and timely review of and a timely issuance or denial of any permit application for a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 11, eff. Sept. 6, 1990.

Revisor's Note

The revised law omits portions of Section 4(e) as unnecessary because those additional provisions apply without an express statement to that effect.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 457, § 1.
Acts 1985, 69th Leg., ch. 464, § 2.
Acts 1985, 69th Leg., ch. 566, §§ 4, 5.
Acts 1987, 70th Leg., ch. 279, §§ 3 to 6.
Acts 1987, 70th Leg., ch. 299, § 1.
Acts 1987, 70th Leg., ch. 638, §§ 7 to 9.
Acts 1987, 70th Leg., ch. 781, § 1.
Acts 1989, 71st Leg., ch. 705, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e).

§ 361.0641. Notice to State Senator and Representative

On receiving an application for, or notice of intent to file an application for, a permit to construct, operate, or maintain a facility to store, process, or dispose of solid waste or hazardous waste, the department or commission, as appropriate, shall send notice of the application or the notice of intent to the state senator and representative who represent the area in which the facility is or will be located.

Added by Acts 1991, 72nd Leg., ch. 236, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 3 of the 1991 Act provides:

"This Act takes effect September 1, 1991, and applies only to an application for a permit or to a notice of intent to apply for a permit received by the Texas Department of Health, the Texas Water Commission, or the Texas Air Control Board on or after that date."

§ 361.065. Repealed by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 3, § 1, eff. Sept. 6, 1990

Historical and Statutory Notes

The former section, relating to the permit application fee, was repealed to conform to Acts 1989, 71st Leg., ch. 1143, § 6, and was derived from:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1971, 62nd Leg., p. 2631, ch. 863.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 239, § 54.
Acts 1985, 69th Leg., ch. 457, § 3.
Acts 1985, 69th Leg., ch. 566, § 7.
Acts 1985, 69th Leg., ch. 887, § 1.
Acts 1985, 69th Leg., ch. 931, art. 8, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(k)(1), (4).
Acts 1989, 71st Leg., ch. 678, § 1.

§ 361.066. Submission of Administratively Complete Permit Application

(a) An applicant must submit any portion of an application that the department or the commission determines is necessary to make the application administratively complete not later than the 270th day after the applicant receives notice from the department or the commission that the additional information or material is needed.

(b) If an applicant does not submit an administratively complete application as required by this section, the application is considered withdrawn, unless there are extenuating circumstances.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 299, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(B).

§ 361.0665. Notice of Intent to Obtain Municipal Solid Waste Permit

(a) A person who applies for a municipal solid waste permit shall publish notice of intent to obtain a permit under this chapter at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

(b) Notice must include:

(1) a description of the location or proposed location of the facility;

(2) a statement that a person who may be affected by the facility or proposed facility is entitled to request a hearing from the department;

(3) the manner in which the department may be contacted for further information; and

(4) any other information that the department by rule requires.

(c) If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located as defined by department rule.

(d) In addition, the department shall publish notice in the Texas Register.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 13(a), eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:
Acts 1989, 71st Leg., ch. 583, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(B).

§ 361.067. Review of Permit Application by Other Governmental Entities

(a) If the department or the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to:

(1) the Texas Air Control Board;[1]

(2) the other state agency;

(3) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and

(4) the county judge and the health authority of the county in which the facility is located.

(b) A governmental entity to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to which the application was originally submitted, to present comments and recommendations on the permit application before the agency acts on the application.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Revisor's Note

The source law refers to "city or town." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(1).

§ 361.068. When Application is Administratively Complete

A permit application is administratively complete when:

(1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the department or the commission; and

(2) the permit application is ready for technical review in accordance with the rules of the board of health or commission.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 566, § 1.
Acts 1985, 69th Leg., ch. 795, § 1.160.
Acts 1987, 70th Leg., ch. 279, § 1(a), (b).
Vernon's Ann.Civ.St. art. 4477-7, § 2(1).

§ 361.069. Determination of Land Use Compatibility

The department or the commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(2).

§ 361.070. Sole Permit Hearing

(a) Except for a permit described under Section 361.071, all participation in the review of a permit application must be through one agency hearing, which shall be the sole permit hearing.

(b) The department or the commission shall conduct the hearing as the lead agency in accordance with the division of their jurisdiction.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, § 3.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(i).

§ 361.071. Permit From Other Agencies

The owner or operator of a hazardous waste or solid waste management facility is not required to obtain a permit from any agency of the state other than the commission to store, process, treat, dispose of, or destroy solid waste or hazardous waste unless:

(1) a permit is required under Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549); or

(2) a permit is required by the Railroad Commission of Texas under Chapter 27, Water Code.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 2.17, eff. Sept. 1, 1991.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2. Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(i).
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, § 3.

§ 361.072. Joint Rules or Memoranda of Agreement With Departmen Commission

(a) The Texas Air Control Board [1] and other agencies that might otherv have jurisdiction for permitting hazardous or solid waste facilities shall e into joint rules or memoranda of agreement with the department or commission.

(b) The joint rules or memoranda of agreement:

(1) must include the criteria that the Texas Air Control Board or otl agency that might otherwise have jurisdiction may prescribe for use by t lead agency in addressing the concerns of the Texas Air Control Board other agency in the permitting process; and

(2) shall at a minimum be consistent with the applicable requirements the United States Environmental Protection Agency for state progra authorization under the federal Solid Waste Disposal Act, as amended the Resource Conservation and Recovery Act of 1976, as amended (U.S.C. Section 6901 et seq.).

(c) Consistent with Section 361.070, the joint rules or memoranda agreement must provide for the incorporation of provisions in the permits the department or the commission for off-site waste management facilitie concerning units that are:

(1) not otherwise subject to the permitting requirements of the depar ment or commission; and

(2) subject to the permitting requirements of the Texas Air Control Boar or other relevant agency.

(d) It is the intent of the legislature that:

(1) to the extent practicable in conformance with Section 361.070–361.078, the lead agency shall defer to the policies, rules, anc interpretations of the Texas Air Control Board on the effect on air quality o the proposed hazardous waste or solid waste management activities; anc

(2) the Texas Air Control Board remain the state's principal authority ir matters of air pollution control.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, §§ 3, 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(i), (ii).

§ 361.073. Air Control Board Review of Permit Application

(a) Except as otherwise provided by Sections 361.070–361.083, the Texas Air Control Board[1] shall perform a technical review of the air quality aspects of a permit application for a solid waste or a hazardous waste management facility concerning the criteria established under Section 361.072.

(b) Except for a permit application for a facility unit that incinerates or burns solid or hazardous waste, this section does not apply to an application for:

(1) a municipal solid waste management facility;

(2) a solid or hazardous waste management facility that existed on September 1, 1987; or

(3) the expansion of a solid or hazardous waste management facility that existed on September 1, 1987.

(c) The Texas Air Control Board shall complete its review under this section and forward recommendations or proposed permit provisions to the lead agency within the time established by the lead agency rules for the completion of technical review of the application.

(d) The lead agency shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by the Texas Air Control Board, unless the lead agency determines that the recommendations or proposed permit provisions are less stringent than applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.). If the Texas Air Control Board's proposed permit provisions conflict with provisions proposed by the lead agency technical staff, the staffs of the two agencies shall attempt to resolve the conflict before the technical review of the application ends.

(e) If a contested case hearing on a permit application is not held by the lead agency, the Texas Air Control Board's recommendations or proposed permit provisions shall be incorporated into the permit issued by the lead agency. If a contested case hearing is held, the Texas Air Control Board shall develop and present the state's evidence and testimony concerning the air quality aspects of the application. Any party, including the lead agency, is entitled to cross-examine any testifying witness of the Texas Air Control Board.

(f) At the conclusion of the presentation of testimony, the hearing examiner shall give the Texas Air Control Board at least 30 days in which to submit

(1) proposed findings of fact and conclusions of law; and

(2) if applicable, proposed permit language, concerning the air quality aspects of the application that relate to the criteria established under Section 361.072.

(g) The hearing examiner and the final decision-making body of the lead agency must accept the information submitted by the Texas Air Control Board under Subsection (f) unless that body finds that the recommendations of the Texas Air Control Board are not supported by a preponderance of the evidence.

(h) The Texas Air Control Board may seek judicial review of the air quality aspects of a final decision of the lead agency. Both the lead agency and the Texas Air Control Board may enforce the terms of a permit issued by the lead agency concerning air quality.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 12(a), eff. Sept. 6, 1990.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Section 2 of Acts 1989, 71st Leg., ch. 400, provides:

"This Act applies only to a permit application for a facility unit or other facility covered by Subparagraph (ii), Paragraph (A), Subdivision (4), Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by this Act, that is pending for consideration by the Texas Department of Health or the Texas Water Commission on the effective date of this Act or submitted to the department or commission on or after that date."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, § 4.
Acts 1989, 71st Leg., ch. 400, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(ii).

§ 361.074. Certain Permit Applications Not Affected

(a) Permit applications for hazardous waste or industrial solid waste management facilities for which contested evidentiary hearings have commenced at the Texas Air Control Board [1] before September 1, 1985, or appeals from decisions of the Texas Air Control Board on those applications, are not affected by Sections 361.072–361.073 and 361.075–361.078.

(b) An applicant may not withdraw a permit application to circumvent the intent of Subsection (a).

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 12(b), eff. Sept. 6, 1990.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Revisor's Note

The source law refers to the "effective date of this provision." The revised law substitutes "September 1, 1985," which is the effective date.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, § 4.
Acts 1989, 71st Leg., ch. 400, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(ii).

§ 361.075. Delegation of Air Control Board Authority

The Texas Air Control Board [1] may delegate to its executive director the powers and duties conferred on the board under Sections 361.072 and 361.073.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(ii).

§ 361.076. Other State Agencies' Review of Permit Application

(a) An agency other than the Texas Air Control Board [1] may review the lead agency's proposed action concerning a permit application and determine if its concerns have been adequately addressed if the agency:

(1) might otherwise have jurisdiction for permitting the facility; and

(2) requested an opportunity to review the lead agency's proposed action.

(b) The other agency may review the lead agency's proposed action:

(1) after the lead agency completes its technical review of the permit application; and

(2) for a period of 20 days after the date on which the lead agency's technical review period ends.

(c) If the other agency determines that its concerns have not been adequately addressed, the other agency's sole remedy concerning the permit is to present its concerns in the permit proceedings of the lead agency.

(d) The other agency is entitled to:

(1) request a hearing;

(2) intervene as a matter of law;

(3) seek judicial review; and

(4) enforce each aspect of a lead agency permit concerning the other agency's jurisdiction.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

[1] The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(iii).

§ 361.077. Exemption of Certain Facilities That Burn Hazardous Waste

Sections 361.070–361.076 do not apply to a facility that burns hazardous waste unless the facility is required to obtain a permit for the burning from the commission under rules adopted by the commission under a state hazardous waste regulatory program.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Revisor's Note

(1) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

(2) The source law refers to the department's authority to adopt rules. The revised law refers to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(iv).

§ 361.078. Maintenance of State Program Authorization Under Federal Law

This subchapter does not abridge, modify, or restrict the authority of the commission to adopt rules under Subchapters B and C,[1] to issue permits and to enforce the terms and conditions of the permits, concerning hazardous waste management to the extent necessary for the commission to receive and maintain state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

[1] Section 361.011 et seq. and section 361.061 et seq.

Revisor's Note

(1) The source law refers to the department's authority to adopt rules. The revised law substitutes the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

(2) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.022.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(v).

§ 361.079. Notice Concerning Receipt of Permit Application; Hearing Procedures

(a) Except as provided by Sections 361.080(b) and 361.081(c), the board of health and the commission by rule shall establish procedures for public notice and a public hearing under Section 361.080 or 361.081.

(b) The hearings shall be conducted in accordance with the hearing rules and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) To improve the timeliness of notice to the public of a public hearing under Section 361.080 or 361.081, public notice of receipt of the permit application shall be provided at the time a permit application is submitted to the department or the commission.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 13(b), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, § 1.03, eff. June 7, 1991.

Revisor's Note

The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 299, § 1.
Acts 1987, 70th Leg., ch. 781, § 1.
Acts 1989, 71st Leg., ch. 583, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(B).

§ 361.0791. Public Meeting and Notice Requirement

(a) Notwithstanding other law, the commission shall hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission, on request of a person affected or as otherwise required by commission rule, shall hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) if notice is provided as required by this section.

(c) A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission, department, or Texas Air Control Board, as appropriate, an affidavit certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(e) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

(1) the permit application number;

(2) the applicant's name;

(3) the proposed location of the facility; and

(4) the location and availability of copies of the permit application.

(f) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.04, eff. June 7, 1991.

Historical and Statutory Notes

Section 1.25(b) of Acts 1991, 72nd Leg., ch. 296 provides:

"The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d), Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article."

Section 1.25(c) of Acts 1991, 72nd Leg., ch. 296 provides:

"The provisions of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to applications already submitted to the permitting agency on the effective date of this article."

§ 361.080. Hearing Concerning Permit Application for Hazardous Industrial Solid Waste Facility

(a) A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located.

(b) Notice for a hearing session held under this section shall be provided in accordance with Section 361.0791.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.05, eff. June 7, 1991.

Historical and Statutory Notes

Sections 1.24, 1.26 to 1.28 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.24. The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commercial hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt all rules, except rules required under Section 1.02 or 1.26 of this article, necessary to carry out the provisions of this article. The Texas Water Commission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.02 or 1.26 of this article, as expeditiously as possible, but no later than 120 days after the effective date of this Act. Pending adoption of all such rules, the commission and the board may not conduct any public hearing on a permit. The commission and the board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. Permits granted after the effective date of this article must comply fully with all

rules adopted by the commission and the board pursuant to this article. For purposes of this section, 'commercial hazardous waste management facility' does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratorium does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity."

"Sec. 1.26. (a) To provide accountability and predictability in the processing of permit applications, the Texas Water Commission shall review its permit application processing procedures to determine the causes of delay, if any, in those activities. After identifying any obstacles to timely determination on permit applications, the commission shall adopt reasonable permit processing and hearing timetables for permits that are determined to be administratively complete, with specific deadlines for each major step in the processing under the control of the commission and hearing procedures. Deadlines under the control of the commission do not include time the commission waits for the receipt of information from an applicant in order to properly review the application. Those deadlines under the control of the commission shall be met unless the executive director finds that the delay is necessary and lists the reasons that the deadlines cannot be met. It is the legislature's intent that permit applicants whose applications address technologies that are most needed as determined under Section 361.0234, Health and Safety Code, as added by this article, receive an ultimate determination on an administratively complete application, favorable or unfavorable, within two years of the date the application is determined to be administratively complete, excluding time not under the control of the commission.

"(b) As part of this study, the Texas Water Commission shall consider mechanisms for encouraging applicants and local communities to cooperate with each other in the siting of new hazardous waste management facilities. The commission shall, at a minimum, consider the creation of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant provides opportunities for citizens to ask questions about the permit application or the draft permit, and any necessary revisions to the local review process provided by Section 361.063, Health and Safety Code. The commission shall report its findings, recommendations, and a summary of the rules adopted under Subsection (a) of this section to the legislature before January 1, 1993.

"Sec. 1.27. If necessary, the Texas Water Commission, the Texas Air Control Board, and the Texas Department of Health shall enter into memoranda of understanding to establish procedures and carry out this article.

"Sec. 1.28. If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in implementing the application procedures required under this article, the appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 299, § 1.
Acts 1987, 70th Leg., ch. 781, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(B).

§ 361.081. Notice of Hearing Concerning Application for a Solid Waste Facility

(a) The department or the commission, whichever is appropriate, shall require the applicant to mail notice to each residential or business address located within one-half mile of a new solid waste management facility and to each owner of real property located within one-half mile of a new solid waste management facility listed in the real property appraisal records of the appraisal district in which the solid waste management facility is sought to be permitted as of the date the department or commission, whichever is appropriate, determines the permit application is administratively complete. The notice must be sent by mail and must be deposited with the United States

postal service not more than 45 days or less than 30 days before the date of the hearing.

(b) The applicant must certify to the department or commission that the mailings were deposited as required by Subsection (a). Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section.

(c) In addition to the requirements of Subsection (a), the department or commission, whichever is appropriate, shall hold a public meeting and the applicant shall give notice concerning the application for a permit for a new hazardous waste management facility as provided by Section 361.0791.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 13(c), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, § 1.06, eff. June 7, 1991.

Revisor's Note

The source law, effective September 1, 1981, refers to hearings being conducted in accordance with rules adopted by the state agency and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the reference as unnecessary because the Administrative Procedure and Texas Register Act and the rules of practice of a state agency required to be adopted under Section 4 of that act apply without an express statement to that effect.

Historical and Statutory Notes

Section 4 of Acts 1989, 71st Leg., ch. 583, provides:

"(a) This Act takes effect September 1, 1989, and applies to an application for a permit under the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) that is submitted to the Texas Department of Health or the Texas Water Commission on or after September 1, 1989.

"(b) An application submitted before September 1, 1989, is covered by the law in effect at the time the application is submitted, and the former law is continued in effect for this purpose."

Section 1.25(b) of Acts 1991, 72nd Leg., ch. 296 provides:

"The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d), Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 781, § 1.
Acts 1989, 71st Leg., ch. 583, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(B).

Notes of Decisions

Laches 1

1. Laches

Although solid waste facility was very near completion and public hearing had been held on permit application, action challenging facility was not barred by laches, where it appeared that plaintiffs who opposed its location did not know what was being constructed until a short time before bringing action and it did not appear that their failure to learn about it earlier was inexcusable. Bean v. Southwestern

Waste Management Corp. (D.C.1979) 482 F.Supp. 673.

§ 361.082. Application for Hazardous Waste Permit; Notice and Hearing

(a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing. At a minimum, the rules shall include the public notice requirements set forth in Section 361.081.

(d) In addition to the hearing held under this section, the commission shall hold a public meeting and the applicant shall give notice as provided by Section 361.0791.

(e) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(f) An owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110 or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by United States Environmental Protection Agency or commission rules relative to termination of interim status.

(g) On request under Section 361.082 by a person affected for a hearing on the permit application, the applicant for a permit for a new hazardous waste management facility shall furnish a bond or other financial assurance authorized by the commission to guarantee payment of the costs of a person affected who provides information to the commission on the question of the issuance of the permit and who is entitled to those costs under an order made as provided by Section 361.0833. For applications involving commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of $100,000. For applications that do not involve commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of $20,000.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.07, eff. June 7, 1991.

Historical and Statutory Notes

Section 1.25(b) of Acts 1991, 72nd Leg. ch. 296 provides:

"The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d), Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 457, § 2.
Acts 1985, 69th Leg., ch. 566, § 6.
Acts 1985, 69th Leg., ch. 795, § 1.162.
Vernon's Ann.Civ.St. art. 4477-7, § 4(f)(2).

§ 361.083. Evidence of Notice of Hearing

(a) Before the department or the commission may hear testimony in a contested case, evidence must be placed in the record to show that proper notice of the hearing was given to affected persons.

(b) If mailed notice to an affected person is required, the department, commission, or other party to the hearing shall place evidence in the record that notice was mailed to the affected person's address as shown by the appropriate appraisal district real property appraisal records at the time of the mailing.

(c) The affidavit of the department or commission employee responsible for the mailing of the notice, attesting that the notice was mailed to the address shown by the appraisal district real property appraisal records at the time of mailing, is prima facie evidence of proper mailing.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 14, eff. Sept. 6, 1990.

Revisor's Note

The source law, effective September 1, 1987, refers to a contested case as defined by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the reference to that act, because the definition of "contested case" in the act applies without an express statement to that effect.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 838, § 7.
Acts 1989, 71st Leg., ch. 583, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(C).

§ 361.0831. Ex Parte Contacts Prohibited

(a) Unless required for the disposition of ex parte matters authorized by law, a hearings examiner of the commission may not communicate, directly or indirectly, with any employee of the commission, any commissioner, or

any party to a hearing conducted by the commission in connection with any issue of fact or law pertaining to a contested case in which the commission or party is involved.

(b) An employee of the commission, a commissioner, or a party to a hearing conducted by the commission may not attempt to influence the finding of facts or the application of law or rules by a hearings examiner of the commission except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate.

(c) If a prohibited contact is made, the hearings examiner shall notify all parties with a summary of that contact and notice of their opportunity to participate and shall give all parties an opportunity to respond.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.08, eff. June 7, 1991.

§ 361.0832. Proposal for Decision; Certified Issues; Reversal by Commission

(a) After hearing evidence and receiving legal arguments, a hearings examiner of the commission shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The hearings examiner shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. The commission shall consider and act on the proposal for decision.

(b) If a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, a hearings examiner, on joint motion of all parties or sua sponte, may certify those policy issues to the commission. A certification request must contain a statement of the policy issue to be determined and a statement of all relevant facts sufficient to show fully the nature of the controversy. The commission may receive written or oral statements from parties to the hearing or the hearings examiner on the policy issue certified. The commission must answer policy issues not later than the 60th day after the date of certification or, in its discretion, may decline to answer. If the commission fails to answer a policy issue within that period, the commission shall be deemed to have declined to answer. The hearings examiner shall proceed with the contested case and make a proposal for decision as required by Subsection (a).

(c) The commission may overturn an underlying finding of fact that serves as the basis for a decision in a contested case only if the commission finds that the finding was not supported by the great weight of the evidence.

(d) The commission may overturn a conclusion of law in a contested case only on the grounds that the conclusion was clearly erroneous in light of precedent and applicable rules.

(e) If a decision in a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, the

commission may reject a proposal for decision as to the ultimate finding for reasons of policy only.

(f) The commission shall issue written rulings, orders, or decisions in all contested cases and shall fully explain in a ruling, order, or decision the reasoning and grounds for overturning each finding of fact or conclusion of law or for rejecting any proposal for decision on an ultimate finding.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.08, eff. June 7, 1991.

§ 361.0833. Costs for Information Provided by a Person Affected Regarding Hazardous Waste Permit

(a) After considering the factors in Subsection (e), the commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected in presenting information set out in Subsection (b) to the commission on the question of the issuance of the permit.

(b) Information for which an award of costs under Subsection (a) may be made includes:

(1) technical studies of the area in which the new hazardous waste facility is proposed to be located;

(2) expert testimony given at a hearing on the permit application; and

(3) surveys of land use and potential use in the hazardous waste facility area.

(c) The commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected who presented information to the commission at a hearing showing that the applicant:

(1) knowingly made false or misleading statements in the application;

(2) knowingly made false or misleading statements during the hearing; or

(3) failed to present information that the applicant had in its possession that would have materially affected the issues of fact and law on which the decision of the commission was based.

(d) The total costs awarded to all persons affected under Subsection (a) may not exceed $100,000 for a new commercial hazardous waste management facility or $20,000 for a new noncommercial hazardous waste management facility. The total costs awarded to all persons affected under Subsection (c) may not exceed $150,000 for a new commercial hazardous waste management facility or $30,000 for a new noncommercial hazardous waste management facility.

(e) In determining the appropriateness of an award under Subsection (a) or (c), the commission shall consider:

(1) whether the information provided is material to the commission's determination to deny the permit or to require the applicant to make significant changes in the facility's design or operation; and

(2) whether the information would otherwise not have been presented to the commission while the commission is considering its decision.

(f) If the applicant fails or refuses to pay the amount of costs ordered not later than the 30th day after the date of entry of the final order granting payment of costs, the commission shall order the applicant's bond or other financial assurance forfeited in the amount of the costs ordered reimbursed under Subsection (a) or (c) up to and including the full amount of the bond or other financial assurance. The commission shall forward the forfeited amount to the person affected.

(g) If no request is made for an award of costs under this section or if a person affected is determined by the commission not to be entitled to an award of costs, the commission shall release the bond or other financial assurance of the applicant subject to an appeal of the denial of costs under this section. The commission shall also release the bond or other financial assurance on presentation of proof that the costs awarded have been paid.

(h) An order issued under this section is enforceable as a debt.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.09, eff. June 7, 1991.

§ 361.084. Compliance Summaries

(a) The board of health and the commission each by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities under each agency's jurisdiction.

(b) The compliance summaries shall be made available to the applicant and any interested person after the lead agency has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state in the preceding five years concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

(d) The agency shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.10, eff. June 7, 1991.

Revisor's Note

The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 5.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(11).

§ 361.085. Financial Assurance and Disclosure by Permit Applicant

(a) Before a permit may be issued, amended, transferred, extended, or renewed for a hazardous waste management facility, the commission shall require as a part of each application information it deems necessary to demonstrate that an applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including how an applicant intends to obtain financing for construction of the facility, and to close the facility in accordance with applicable rules. That information may include balance sheets, financial statements, and disclosure of relevant information regarding investors and stockholders, or information required by Title 40, Code of Federal Regulations, Part 264, Subpart H. If the information would be considered confidential under applicable law, the commission shall protect the information accordingly. During hearings on contested applications, the commission may allow disclosure of confidential information only under an appropriate protective order.

(b) The commission may order a party in a contested case permit hearing to provide:

(1) the identity of any known competitor of the applicant that has provided funding to the party for its participation in the hearing; and

(2) the amount of that funding.

(c) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(d) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(e) An agency may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(f) The agency to which the application is submitted shall require an assurance of financial responsibility as may be necessary or desirable consist-

ent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(g) Financial requirements established by the agency must at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(h) The department and the commission may each:

(1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and

(2) spend the funds from the financial assurance arrangement to close the facility.

(i) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the department or commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(j) In addition to other forms of financial assurance authorized by rules of the board of health or commission, the agency may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

(1) a bank chartered by the state or the federal government; and

(2) federally insured and its financial practices are regulated by the state or the federal government.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.12, eff. June 7, 1991.

Revisor's Note

The source law refers to the department's authority to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 464, § 2.
Acts 1987, 70th Leg., ch. 279, § 5.
Acts 1987, 70th Leg., ch. 638, § 8.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(5).

Notes of Decisions

Surety bond 1

1. **Surety bond**

The Texas Water Quality Board has no authority to require a surety bond as a condition precedent to issuing a license to the owner or operator of a solid waste disposal site. Op. Atty.Gen. 1971, No. M-810.

§ 361.086. Separate Permit for Each Facility

(a) A separate permit is required for each solid waste facility.

(b) A permit under this subchapter may be issued only to the person in whose name the application is made and only for the facility described by the permit.

(c) A permit may not be transferred without first giving written notice to and receiving written approval of the agency that issued the permit.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(2), (7).

~~§ 361.0861. Separate Recycling Permit not Required~~

~~(a) A permit holder or a municipal solid waste management facility that has or plans to have a recycling or waste separation facility established in conjunction with the permitted municipal solid waste management facility is not required to obtain for that recycling or waste separation facility a separate permit from the department or to apply for an amendment to an existing permit issued by the department.~~

~~(b) A facility to which this section applies must register with the department in accordance with board of health rules and comply with board of health rules adopted under this chapter.~~

~~(c) If a permit is otherwise required, the department shall expedite the permit proceeding if the applicant is seeking a permit for a solid waste management facility that employs an innovative, high technology method of waste disposition and recycling.~~

~~Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 15, eff. Sept. 6, 1990.~~

~~Historical and Statutory Notes~~

~~**Prior Laws:**~~
~~Acts 1989, 71st Leg., ch. 641, § 1.~~
~~Vernon's Ann.Civ.St. art. 4477-7, § 4B.~~

§ 361.087. Contents of Permit

A permit issued under this subchapter must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the permit is issued, including the duration of the permit.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg. p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(2).

Notes of Decisions

Conditions 1

1. Conditions

Special provisions in permit issued by Department of Health for solid waste sanitary landfill, requiring permit holder to upgrade access road and bridge to site in compliance with county specifications and subject to approval of county commissioners' court, and requiring that permit holder obtain approval from Department of Highways and Public Transportation for upgrading junction of county access road with highway, did not constitute unlawful reassignment by Department of Health of function committed to it by legislature; Department's authority under statute broadly includes "control of all aspects of municipal solid waste management," and special conditions did not require other public bodies to consider any health and environmental concerns before giving their approval, but only that access road be improved so that it met requirements of other public bodies. Lipsey v. Texas Dept. of Health (App. 3 Dist.1987) 727 S.W.2d 61, ref. n.r.e.

The Texas Water Quality Board is given broad discretion to issue rules and regulations governing proceedings before it for permits and orders and may require, as a condition to the issuance of a permit, that a feedlot owner submit evidence to establish that his operation will not cause wastes to pollute ground or surface waters. In any event, the Texas Water Quality Board is the agency designated by this article to control disposition of solid wastes. Op.Atty.Gen. 1973, No. H-64.

The Texas Water Quality Board has no general authority to engage in land-use planning, but it possesses authority under the Texas Water Quality Act (V.T.C.A. Water Code, § 21.001 et seq.), this article, and possibly the Disposal Well Act (V.T.C.A. Water Code, § 22.001 et seq.), to condition the granting of its permits to point or nonpoint sources of water contaminants upon proper site selection. Op.Atty.Gen. 1976, No. H-802.

§ 361.0871. Evaluation of Waste Stream; Land Use and Need

(a) Before a permit may be issued for a new hazardous waste management facility or amended to provide for capacity expansion, the applicant shall identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the commission may require.

(b) In evaluating a permit for a new hazardous waste management facility, the commission shall assess the impact of the proposed facility on local land use in the area, including any relevant land use plans in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed. In determining whether a new hazardous waste management facility is compatible with local land use, the commission shall consider, at a minimum, the location of industrial and other waste-generating facilities in the area, the amounts of hazardous waste generated by those facilities, and the risks

associated with the transportation of hazardous waste to the facility. If the commission determines that a proposed application is not compatible with local land use, it may deny the permit. The commission shall adopt rules to implement this subsection.

(c) In accordance with Section 361.0232, in evaluating an application for a new commercial hazardous waste management facility, the commission shall determine the need for the specific technology proposed in the facility to manage new or increased volumes of waste generated in the state. The commission rules adopted under Section 361.0232 shall identify the types of technology for which a commercial waste management need exists and shall provide for priority consideration in permit processing for those applications that address the highest priority need as identified by the commission.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.13, eff. June 7, 1991.

§ 361.088. Permit Issuance, Amendment, Extension and Renewal; Notice and Hearing

(a) The department or the commission may amend, extend, or renew a permit it issues in accordance with reasonable procedures prescribed by the department or commission, as appropriate.

(b) The procedures prescribed by Section 361.067 for a permit application apply to an application to amend, extend, or renew a permit.

(c) Before a permit is issued, amended, extended, or renewed, the agency to which the application is submitted shall provide an opportunity for a hearing to the applicant and persons affected. The agency may also hold a hearing on its own motion.

(d) In addition to providing an opportunity for a hearing held under this section, the department or the commission shall hold a public meeting and give notice as provided by Section 361.0791.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.14, eff. June 7, 1991.

Historical and Statutory Notes

Section 1.25(b) of Acts 1991, 72nd Leg., ch. 296 provides:

"The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d), Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1971, 62nd Leg., ch. 863.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, §§ 3, 4.
Acts 1987, 70th Leg., ch. 299, § 1.
Acts 1987, 70th Leg., ch. 638, § 7.
Acts 1987, 70th Leg., ch. 781, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(3), (4).

~~§ 361.0885. Denial of Application; Involvement of Former Employee~~

(a) After providing an opportunity for a hearing to an applicant, the state agency shall deny an application for the issuance, amendment, renewal, or transfer of a permit within its jurisdiction and may not issue, amend, renew, or transfer the permit if the state agency determines that a former employee:

(1) participated personally and substantially as a former employee in the state agency's review, evaluation, or processing of that application before leaving employment with the state agency; and

(2) after leaving employment with the state agency, provided assistance on the same application for the issuance, amendment, renewal, or transfer of a permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) Action taken under this section does not prejudice any application in which the former employee did not provide assistance.

(c) In this section, "former employee" means a person:

(1) who was previously employed by the state agency as a supervisory or exempt employee; and

(2) whose duties during employment with that state agency included involvement in or supervision of that state agency's review, evaluation, or processing of applications.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 16, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 1175, § 3.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(14).

§ 361.089. Permit Denial, Amendment, Suspension or Revocation; Notice and Hearing

(a) The department or commission may, for good cause, deny, amend, or revoke a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste.

(b) Except as provided by Section 361.110, the department or commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder or applicant and persons affected. The department or commission may also hold a hearing on its own motion.

(c) The board of health and the commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the ~~hearing rules adopted by the department or commission and the applicable~~

provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) The department or commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if it is found, after notice and hearing, that:

(1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;

(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant;

(3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the agency, its officers, or its employees;

(4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the agency; or

(5) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the agency.

(f) Before denying, suspending, or revoking a permit under this section, the department or commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the agency.

(g) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20 percent of the permit holder or applicant and at least 20 percent of another business which operates a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.11, eff. June 7, 1991.

Revisor's Note

(1) The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

(2) The source law, effective September 1, 1981, refers to hearings being conducted in accordance with rules adopted by the state agency and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the reference as unnecessary for the reason stated in the revisor's note under Section 361.081.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 457, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(8).

Notes of Decisions

Grounds for denial 1
Grounds for revocation 2

1. Grounds for denial

Local opposition, standing alone, should have no part in Water Quality Board's determinations of whether to issue solid waste permits. Starr County v. Starr Indus. Services, Inc. (Civ.App.1979) 584 S.W.2d 352, ref. n.r.e.

Water Quality Board's denial of application for solid waste permit was arbitrary and capricious where applicant worked closely with Board's staff and apparently had complied with all staff's requirements and where Board at least partially based its decision on finding of local opposition to application. Id.

Evidence concerning stench from existing landfill, evidence that garbage attracted rats, flies, and stray dogs, evidence of outbreaks of fires at dump, evidence of presence of loose trash in the neighborhood, and evidence of potential damage to surface and subsurface waters near the proposed site for landfill unless corrective measures were developed sustained denial of application for solid waste disposal permit. Browning-Ferris, Inc. v. Texas Dept. of Health (App.1981) 625 S.W.2d 764 ref. n.r.e.

2. Grounds for revocation

Determination of Water Quality Board, now replaced by Water Development Board and Department of Water Resources, to revoke permit for disposal of hazardous waste materials was based on substantial evidence indicating that permittee had not only come to a state of disarray at time of revocation hearing with overwhelming debts and few assets, but had become involved in litigation over right to use surface at disposal site, and had engaged in uranium mining at site that affected movement of groundwater which, in turn, presented a water pollution problem in event wastes in question were buried as planned. South Texas Indus. Services, Inc. v. Texas Dept. of Water Resources (Civ.App.1978) 573 S.W.2d 302, ref. n.r.e.

§ 361.090. Regulation and Permitting of Certain Industrial Solid Waste Disposal

(a) The commission may not require a permit under this chapter for the collection, handling, storage, processing, and disposal of industrial solid waste that is disposed of within the boundaries of a tract of land that is:

(1) owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; and

(2) located within 50 miles from the plant or operation that is the source of the industrial solid waste.

(b) This section does not apply to:

(1) waste collected, handled, stored, processed, or disposed of with solid waste from any other source or sources; or

(2) hazardous waste.

(c) This section does not change or limit any authority the commission may have concerning:

(1) the requirement of permits and the control of water quality, or otherwise, under Chapter 26, Water Code; or

~~(2) the authority under Section 361.303.~~

(d) The commission may adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this section applies to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

(e) The commission may require a person who disposes or plans to dispose of industrial solid waste and claims to be exempt under this section to submit to the commission information that is reasonably required to enable the commission to determine if this section applies to the waste disposal activity.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

(1) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

(2) The revised law substitutes Section 361.303 for the source law reference to "Subsection (k) of this section." Section 361.303 is the revised version of Section 4(m) of the source law. Chapter 457, Acts of the 69th Legislature, Regular Session, 1985, added the reference to Subsection (k) and also added a new Subsection (k), which related to corrective action. Because of amendments to that act after 1985, the 1985 version of Section 4(k) is now Section 4(m) of the source law, and the revised law reflects that.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 457, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(f)(1).

§ 361.091. Enclosed Containers or Vehicles; Permits; Inspections; Criminal Penalty

(a) A solid waste site or operation permitted as a Type IV landfill may not accept solid waste that is in a completely enclosed container or enclosed vehicle unless:

(1) the solid waste is transported on a route approved by the department and designed to eliminate putrescible, hazardous, or infectious waste;

(2) the solid waste is delivered to the site or operation on a date and time designated and approved by the department to eliminate putrescible, hazardous, or infectious waste;

(3) the transporter possesses a special permit issued by the department that includes the approved route, date, and time; and

(4) a department inspector is present to verify that the solid waste is free ~~of putrescible, hazardous, or infectious waste.~~

(b) The department may issue the special permit under this section and charge a reasonable fee to cover the costs of the permit. The board of health may adopt rules of procedure necessary to carry out the permit program.

(c) The department may employ one or more inspectors and other employees necessary to inspect and determine if Type IV landfills are free of putrescible, hazardous, or infectious waste. The department shall pay the compensation and expenses of inspectors and other necessary employees employed under this subsection, but the holders of Type IV landfill permits shall reimburse the department for the compensation and expenses as provided by this section.

(d) The department shall notify each holder of a Type IV landfill permit of the compensation and expenses that are required annually for the inspection of the landfills.

(e) The department shall hold a public hearing to determine the apportionment of the administration costs of the inspection program among the holders of Type IV landfill permits. After the hearing, the department shall equitably apportion the costs of the inspection program and issue an order assessing the annual costs against each permit holder. The department may provide for payments in installments and shall specify the date by which each payment must be made to the department.

(f) A holder of a permit issued under this section may not accept solid waste if the permit holder is delinquent in the payment of costs assessed under Subsection (e).

(g) The department's order assessing costs is effective until the department:

(1) modifies, revokes, or supersedes an order assessing costs with a subsequent order; or

(2) issues supplementary orders applicable to new Type IV landfill permits.

(h) The board of health may adopt rules necessary to carry out this section.

(i) An operator of a solid waste facility or a solid waste hauler commits an offense if the operator or hauler disposes of solid waste in a completely enclosed container or vehicle at a solid waste site or operation permitted as a Type IV landfill:

(1) without having in possession the special permit required by this section;

(2) on a date or time not authorized by the department; or

(3) without a department inspector present to verify that the solid waste is free of putrescible, hazardous, and infectious waste.

(j) An offense under this section is a Class B misdemeanor.

(k) Penalties under this section are in addition to any other penalty applicable under this chapter.

(l) This section does not apply to:

(1) a stationary compactor that is at a specific location and that has an annual permit under this section issued by the department, on certification to the department by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the department to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the department that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.

(m) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law authorizes the department to adopt rules. The revised law assigns that power to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1987, 70th Leg., ch. 1119, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4A.

Cross References

Punishment, Class B misdemeanor, see V.T.C.A. Penal Code, § 12.22.

§ 361.092. Permit for Extracting Materials From Certain Solid Waste Facilities

(a) The department and the commission may each require a permit to extract materials for energy and material recovery and for gas recovery from closed or inactive portions of a solid waste facility that has been used for disposal of municipal or industrial solid waste.

(b) The department or the commission shall issue a permit under this section in the same manner as provided by this subchapter for issuance of a permit to operate and maintain a solid waste facility.

(c) Each agency shall adopt standards necessary to ensure that the integrity of a solid waste facility is maintained.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2947, ch. 503, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(j).

§ 361.093. Regulation and Permitting of Rendering Plants

(a) A manufacturing or processing establishment, commonly known as a rendering plant, that processes waste materials originating from animals and from materials of vegetable origin, including animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin, is subject to regulation under the industrial solid waste provisions of this chapter and may be regulated under Chapter 26, Water Code.

(b) If a rendering plant is owned by a person who operates the plant as an integral part of an establishment that manufactures or processes for animal or human consumption food derived wholly or partly from dead, slaughtered, or processed animals, the combined business may operate under a single permit issued under Chapter 26, Water Code.

(c) This section does not apply to a rendering plant in operation and production on or before August 27, 1973.

(d) In this section, "animals" includes only animals, poultry, and fish.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(9).

§ 361.094. Permit Holder Exempt From Local License Requirements

If a permit is issued, amended, renewed, or extended by the department or the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or from a county.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(6).

§ 361.095. Applicant for Hazardous Waste Management Facility Permit Exempt From Local Permit

(a) An applicant for a permit under this subchapter is not required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state.

(b) A local government or other political subdivision of the state may not adopt a rule or ordinance that conflicts with or is inconsistent with the requirements for hazardous waste management facilities as specified by the rules of the commission or by a permit issued by the commission.

(c) In an action to enforce a rule or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d) The validity or applicability of a rule or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule or ordinance, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an application for or the issuance of a permit for the siting, construction, or operation of a hazardous waste management facility.

(e) The local government or other political subdivision whose rule or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and the commission may become a party to the action.

(f) A declaratory judgment may be rendered even if the plaintiff has requested the commission, the local government or political subdivision, or another court to determine the validity or applicability of the rule or ordinance in question.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

(1) The reference to "regulation" is omitted from the revised law for the reason stated in Revisor's Note (2) under Section 361.032.

(2) The source law refers to the department's authority to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

(3) The source law refers to the "Uniform Declaratory Judgments Act (Article 2524–1, Vernon's Texas Civil Statutes)." That act is codified in Chapter 37, Civil Practice and Remedies Code, and the revised law reflects this change.

(4) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(6).

§ 361.096. Effect on Authority of Local Government or Other Political Subdivision

(a) Except as specifically provided by this chapter, this subchapter does not limit the powers and duties of a local government or other political subdivision of the state as conferred by this or other law.

(b) Sections 361.094 and 361.095 do not affect the power of a local government or other political subdivision to adopt or enforce building codes.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(6).

§ 361.097. Condition on Issuance of Permit for Hazardous Waste Management Facility

The commission by rule shall condition the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on the selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.098. Prohibition on Permit for Hazardous Waste Landfill in 100-Year Floodplain

(a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet.

(b) The commission by rule may allow an areal expansion of a landfill in a 100-year floodplain if it can be demonstrated to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(c) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste land disposal unit if the unit is to be located in a 100-year floodplain, unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(d) The commission by rule shall require an applicant to provide sufficient information to assure that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.15, eff. June 7, 1991.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.099. Prohibition on Permit for Hazardous Waste Management Unit in Wetlands

(a) The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the unit is to be located in wetlands, as defined by the commission.

(b) In this section and Section 361.100, "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility used to manage hazardous waste.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.100. Prohibition on Permit for Certain Hazardous Waste Management Units

The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit if the landfill:

(1) is in a floodplain of a perennial stream subject to not less than one percent chance of flooding in any year, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, V0, or V1-30; and

(2) receives hazardous waste for a fee.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law refers to the "effective date of this Act." The revised law substitutes "September 1, 1985," which is the effective date.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.101. Prohibition on Permit for Facility on Recharge Zone of Sole Source Aquifer

The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill, land treatment facility, surface impoundment, or waste pile, or areal expansion of such a facility, if the facility is to be located on the recharge zone of a sole source aquifer.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.1011. Prohibition on Permit for Facility Affected by Fault

If a fault exists within two and one-half miles from the proposed or existing wellbore of a Class I injection well or the area within the cone of influence, whichever is greater, or if a fault exists within 3,000 feet of a proposed hazardous waste management facility other than a Class I injection well or of a capacity expansion of an existing hazardous waste management facility, the burden is on the applicant, unless previously demonstrated to the commission or to the United States Environmental Protection Agency, to show:

(1) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(2) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(A) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(B) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.16, eff. June 7, 1991.

Historical and Statutory Notes

Section 1.25(a), (d), (e) of Acts 1991, 72nd Leg., ch. 296 provides:

"(a) This article applies to any permit application, including permit applications for facilities operating under interim status, covered by the terms of this article that is pending approval on the effective date of this article. Any application for renewal of or amendment to a permit for an existing facility that includes a request for authorization to increase capacity at the facility shall comply with the terms of this article; provided, however, that the provisions of Sections 1.16 and 1.17 of this article do not apply to an application for renewal of or amendment to a permit for an existing facility or to an existing facility burning waste-derived fuels under a Texas Water Commission or Texas Air Control Board permit on the effective date of this article."

"(d) The provisions of this article do not apply to applications that are on file on the effective date of this article and that are only for permits for the disposal of treatment residues and other nonincinerable wastes generated at the same facility or at facilities wholly owned by the applicant.

"(e) The provisions of this article apply to any application to amend a nonhazardous waste facility permit to accept hazardous waste that is pending approval on the effective date of this article and to all existing nonhazardous waste permits. If a nonhazardous waste facility has become a hazardous waste facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. The provisions of this article and this subsection do not apply to a noncommercial facility that is required to obtain a hazardous waste permit under the federal toxicity characteristic rule."

§ 361.102. Prohibition on Permit for Hazardous Waste Management Facilities Within a Certain Distance of Residence, Church, School, Day Care Center, Park, or Public Drinking Water Supply

(a) Except as provided by Subsections (b) and (c), the commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(b) The commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(c) For a subsequent areal expansion of a new commercial hazardous waste management facility that was required to comply with Subsection (b), distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(d) The commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries, consistent with the purposes of this chapter.

(e) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by Subsections (a), (b), (c), and (d) do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(f) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.17, eff. June 7, 1991.

Historical and Statutory Notes

Section 1.25(a), (d), (e) of Acts 1991, 72nd Leg., ch. 296 provides:

"(a) This article applies to any permit application, including permit applications for facilities operating under interim status, covered by the terms of this article that is pending approval on the effective date of this article. Any application for renewal of or amendment to a permit for an existing facility that includes a request for authorization to increase capacity

at the facility shall comply with the terms of this article; provided, however, that the provisions of Sections 1.16 and 1.17 of this article do not apply to an application for renewal of or amendment to a permit for an existing facility or to an existing facility burning waste-derived fuels under a Texas Water Commission or Texas Air Control Board permit on the effective date of this article."

"(d) The provisions of this article do not apply to applications that are on file on the effective date of this article and that are only for permits for the disposal of treatment residues and other nonincinerable wastes generated at the same facility or at facilities wholly owned by the applicant.

"(e) The provisions of this article apply to any application to amend a nonhazardous waste facility permit to accept hazardous waste that is pending approval on the effective date of this article and to all existing nonhazardous waste permits. If a nonhazardous waste facility has become a hazardous waste facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. The provisions of this article and this subsection do not apply to a noncommercial facility that is required to obtain a hazardous waste permit under the federal toxicity characteristic rule."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.103. Other Areas Unsuitable for Hazardous Waste Management Facility

The commission by rule shall define the characteristics that make other areas unsuitable for a hazardous waste management facility, including consideration of:

(1) flood hazards;

(2) discharge from or recharge to a groundwater aquifer;

(3) soil conditions;

(4) areas of direct drainage within one mile of a lake used to supply public drinking water;

(5) active geological processes;

(6) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or

(7) critical habitat of endangered species.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.104. Prohibition on Permit for Facility in Unsuitable Area

The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing

hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the commission under Section 361.103 unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.105. Petition by Local Government for Rule on Hazardous Waste Facility in Unsuitable Area

(a) The commission by rule shall allow a local government to petition the commission for a rule that restricts or prohibits the siting of a new hazardous waste disposal facility or other new hazardous waste management facility in an area including an area meeting one or more of the characteristics described by Section 361.103.

(b) A rule adopted under this section may not affect the siting of a new hazardous waste disposal facility or other new hazardous waste management facility if an application or a notice of intent to file an application concerning the facility is filed with the commission before the filing of a petition under this section.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.106. Prohibition on Permit for Landfill if Alternative Exists

The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to the landfill that is reasonably available to manage the types and classes of hazardous waste that might be disposed of at the landfill.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.107. Hydrogeologic Report for Certain Hazardous Waste Facilities

The commission by rule shall require an applicant for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.108. Engineering Report for Hazardous Waste Landfill

The commission by rule shall require an applicant for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering report evaluating:

(1) the benefits, if any, associated with constructing the landfill above existing grade at the proposed site;

(2) the costs associated with the above grade construction; and

(3) the potential adverse effects, if any, that would be associated with the above grade construction.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.109. Grant of Permit for Hazardous Waste Management Facility

(a) The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

(1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;

(2) the applicant for a proposed hazardous waste management facility has made a reasonable effort to ensure that the burden, if any, imposed by

the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be minimized or mitigated; and

(3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed.

(b) If the commission determines that a burden on public roadways will be imposed by a new commercial hazardous waste management facility, the commission shall require the applicant to pay the cost of the improvements necessary to minimize or mitigate the burden. The applicant shall bear the costs associated with any required roadway improvements. The failure of a county or municipality to accept the funds and make the improvements shall not be the basis for denial or suspension of a permit.

(c) The commission shall not process an application for a permit for a new commercial hazardous waste management facility unless the applicant:

(1) has provided sufficient evidence that emergency response capabilities are available or will be available before the facility first receives waste in the area in which the facility is located or proposed to be located to manage a reasonable worst-case emergency condition associated with the operation of the facility; or

(2) has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the commission to manage a reasonable worst-case emergency condition associated with the facility.

(d) If the applicant intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located to satisfy the requirements of Subsection (c), the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. If financial assurance is required, the financial assurance must be for the benefit of the county government or municipal government in the county in which the facility is located or proposed to be located, or both, and must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment. The commission shall adopt rules to ensure that the county or municipal government or other entity has sufficient emergency response capabilities before the facility first receives waste.

(e) A permit for a new commercial hazardous waste management facility shall not be granted unless the applicant provides a summary of its experience in hazardous waste management and in the particular hazardous waste management technology proposed for the application location. Any applicant without experience in the particular hazardous waste management technology

shall conspicuously state that lack of experience in the application or a permit shall not be granted pursuant to the application. A permit may not be denied solely on the basis of lack of experience of the applicant.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.18, eff. June 7, 1991.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1987, 70th Leg., ch. 638, § 9.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(13).

§ 361.110. Termination of Authorization or Permit

Authorization to store, process, or dispose of hazardous waste under Section 361.082 or under a solid waste permit issued under this subchapter that has not been reissued in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), terminates as follows:

(1) in the case of each land disposal facility, on November 8, 1985, unless the facility owner or operator applied for a final determination concerning the issuance of a permit before that date and certified that the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements;

(2) in the case of each incinerator facility, on November 8, 1989, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1986; or

(3) in the case of any other solid waste facility, on November 8, 1992, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1988.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The revised law omits as executed the source law provision stating that a land disposal facility permit terminates on November 8, 1985, under certain circumstances.

Historical and Statutory Notes

Prior Laws:
Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 457, § 3.
Vernon's Ann.Civ.St. art. 4477-7, § 4(*l*).

Vernon's

TEXAS CODES ANNOTATED

HEALTH AND SAFETY CODE

Sections 365.001 to 480

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CHAPTER 371. USED OIL COLLECTION, MANAGEMENT, AND RECYCLING

SUBCHAPTER A. GENERAL PROVISIONS

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SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES

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[Sections 371.046 to 371.060 reserved for expansion]

SUBCHAPTER D. USED OIL RECYCLING FUND; FEES

371.061. Used Oil Recycling Fund.
371.062. Fee on Sale of Automotive Oil.

SUBCHAPTER A. GENERAL PROVISIONS

~~§ 371.001. Short Title~~

This chapter may be cited as the ~~Used Oil Collection~~, Management, and Recycling Act.

~~Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.~~

Historical and Statutory Notes

Section 23(c) of Acts 1991, 72nd Leg., ch. 303, eff. Sept. 1, 1991, as amended by § 1.0261 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, eff. Aug. 26, 1991, provides:

"Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by Chapter 371, Health and Safety Code, as added by this Act."

§ 371.002. Findings

The legislature finds that:

(1) when properly managed, used oil is a valuable energy resource, the reuse of which may make a significant contribution toward energy efficiency and conservation;

(2) recycling used oil to produce fuel requires significantly less energy than is needed to refine crude oil into fuel;

(3) millions of gallons of used oil generated each year by private citizens in the state are not available for recycling because of improper disposal practices and the lack of collection facilities;

(4) although there is a reliable system for the collection and recycling of used oil generated by business and industry, private citizens have only limited access to that system and often dispose of their used oil on land or in landfills, sewers, drainage systems, septic tanks, surface waters or groundwaters, watercourses, or marine waters;

(5) improper disposal of this used oil is both a significant environmental problem and a waste of a valuable energy resource; and

(6) adequate public funds are required to provide for the proper collection, management, and recycling of used oil.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

United States Code Annotated

Federal actions with respect to recycled oil, see 42 U.S.C.A. § 6363.

§ 371.003. Definitions

In this chapter:

(1) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck.

(2) "Board" means the Texas Natural Resource Conservation Commission.

(3) "Department" means the Texas Natural Resource Conservation Commission.

~~(4) "Do-it-yourself (DIY) used oil" means used oil that is generated by a~~ person who changes the person's own automotive oil.

(5) "Generator" means a person whose act or process produces used oil.

(6) "Public used oil collection center" means:

(A) an automotive service facility that in the course of business accepts for recycling small quantities of used oil from private citizens;

(B) a facility that stores used oil in aboveground tanks and in the course of business accepts for recycling small quantities of used oil from private citizens; and

(C) a publicly sponsored collection facility that is designated and authorized by the department to accept for recycling small quantities of used oil from private citizens.

(7) "Reclaiming" means using methods, other than rerefining, to remove insoluble impurities from used oil and making the used oil suitable for further use as a lubricant or petroleum product. The term includes settling, heating, dehydration, filtration, or centrifuging.

(8) "Recycling" means:

(A) preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means; or

(B) using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil.

(9) "Rerefining" means applying refining processes to used oil to produce high-quality base stocks for lubricants or other petroleum products.

(10) "Used oil" means any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties, but that may be suitable for further use and is recyclable.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.045, eff. Aug. 12, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

~~[Sections 371.004 to 371.020 reserved for expansion]~~

SUBCHAPTER B. USED OIL RECYCLING PROGRAM

~~§ 371.021. Public Education~~

The department shall conduct an ~~education program~~ to inform the public of the need for and ~~benefits~~ of collection and recycling of used oil. The ~~program shall:~~

(1) establish, maintain, and publicize a used oil information center that prepares and disperses materials and information explaining laws and rules regulating used oil and informing the public of places and methods for proper recycling of used oil;

(2) encourage the voluntary establishment of used oil collection and recycling programs by private businesses and organizations and by local governments and provide technical assistance to persons who organize those programs; and

(3) encourage local governments to procure recycled automotive and industrial oils and oils blended with recycled oils, if those oils meet equipment manufacturer's specifications.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

§ 371.022. Notice by Retail Dealer

A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the department informing the public that improper disposal of used oil is prohibited by law. The sign shall also prominently display the toll-free telephone number of the state used oil information center established under Section 371.021.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 24(d) of the 1991 act provides:

"Section 371.022, Health and Safety Code, as added by this Act, applies on or after April 1, 1992, to a dealer who is subject to the requirements of that section."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

§ 371.023. Grants to Local Governments

(a) The department shall develop a grant program for local governments that encourages the collection, reuse, and recycling of DIY used oil.

(b) A grant may be made for any project approved by the department. The department shall consider for grant assistance any local government project that uses one or more of the following programs:

(1) curbside pickup of containers of DIY used oil by a local government or its representative;

(2) retrofitting of municipal solid waste equipment to facilitate curbside pickup of DIY used oil;

(3) establishment of publicly operated DIY used oil collection centers at landfills, fire stations, or other public places;

(4) provision of containers and other materials and supplies that can be used to store DIY used oil for pickup or delivery to a used oil collection center in an environmentally sound manner; and

(5) any other activity the department determines will encourage the proper recycling of DIY used oil.

(c) The board by rule shall establish procedures for the application for and criteria for the award of grants under this section.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

§ 371.024. Collection Facilities

(a) All businesses that change motor oil for the public and all appropriate government agencies are encouraged to serve as public used oil collection centers.

(b) A public used oil collection center annually shall:

(1) register with the department; and

(2) report to the department the amounts of used oil collected by the center from the public.

(c) The board shall adopt rules governing the registration of and reporting by public used oil collection centers.

(d) The board by rule shall adopt standards for managing and operating a public used oil collection center.

(e) The department may impose a registration fee in an amount sufficient to cover the cost of registering public used oil collection centers.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

Cross References

Civil penalties, application, see § 371.043.
Used oil recycling fund, contributions from fees collected under this section, see § 371.061.

§ 371.025. Limitation of Liability

(a) A person may not recover from the owner, operator, or lessor of a registered public used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

(1) the owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);

(2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and

(3) the collection center is in compliance with management standards adopted by the department.

(b) For purposes of this section, the owner, operator, or lessor of a public used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a public used oil collection center. This section does not apply to grossly negligent activities related to the operation of a used oil collection center.

(d) This section does not affect or modify the obligations or liability of any person other than the owner, operator, or lessor of the collection center under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances.

(e) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a collection center with regard to services other than accepting used oil from the public.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

§ 371.026. Registration of Persons Transporting, Marketing, or Recycling Used Oil

(a) A person who transports over public highways of this state more than 500 gallons of used oil annually, who markets more than 500 gallons of used oil annually, or who recycles more than 10,000 gallons of used oil annually shall register annually with the department on forms prescribed by the department and in accordance with board rules.

(b) The department shall develop a registration program for transporters, marketers, and recyclers of used oil.

(c) The board shall adopt rules governing registration and reporting of used oil transporters, marketers, and recyclers. The rules shall require that a used oil transporter, marketer, or recycler:

(1) register annually with the department;

(2) report annually the sources of used oil transported, marketed, or recycled during the preceding year, the quantity of used oil received, the date of receipt, and the destination or end use of the used oil;

(3) provide evidence of familiarity with applicable state laws and rules and management procedures applicable to used oil transportation, marketing, or recycling; and

(4) provide proof of liability insurance or other evidence of financial responsibility for any liability that may be incurred in transporting, marketing, or recycling used oil.

(d) The board by rule shall adopt reasonable management and safety standards for the transportation, marketing, and recycling of used oil.

(e) The department may impose a registration fee in an amount sufficient to cover the cost of registering used oil transporters, marketers, and recyclers.

(f) A utility or industrial generator of used oil that transports its own used oil from one generator-owned or generator-operated facility to another or that recycles its own used oil for use in its operations is not required to register or report under this section.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 24(e) of the 1991 act provides:

"Section 371.026, Health and Safety Code, as added by this Act, applies only to a person who transports, markets, or recycles used oil on or after April 1, 1992."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

Cross References

Civil penalties, application, see § 371.043.
Noncompliance with registration requirements as an offense, see § 371.041.
Used oil recycling fund, contributions from fees collected under this section, see § 371.061.

§ 371.027. Gifts and Grants

The department may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

Cross References

Used oil recycling fund, contributions from gifts collected under this section, see § 371.061.

§ 371.028. Rules

The board may adopt any rules necessary to carry out the purposes of this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

[Sections 371.029 to 371.040 reserved for expansion]

SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES

§ 371.041. Actions Prohibited

(a) A person may not collect, transport, store, recycle, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

(b) A person commits an offense if the person:

(1) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

(2) knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills;

(3) intentionally mixes or commingles used oil with hazardous waste or other hazardous substances or PCBs;

(4) transports, markets, or recycles used oil within the state without first complying with the registration requirements of Section 371.026 and rules adopted under that section;

(5) applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment; or

(6) violates an order of the department to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity.

(c) It is an exception to the application of Subsection (b) if a person unknowingly disposes into a landfill any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(d) It is an exception to the application of Subsection (b)(2) if the mixing or commingling of used oil with solid waste that is to be disposed of in landfills is incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

Historical and Statutory Notes

Section 24(b) of the 1991 act, effective September 1, 1991, provides:

"Subchapter C, Chapter 371, Health and Safety Code, as added by this Act, takes effect April 1, 1992, and applies only to an offense that occurs on or after April 1, 1992. For purposes of this subsection, an offense is committed on or after April 1, 1992, if any element of the offense occurs on or after that date."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

§ 371.042. Criminal Penalties

(a) Except as provided by Subsection (b), an offense under Section 371.041 is a Class C misdemeanor.

(b) If it is shown on the trial of an offense under Section 371.041 that the defendant has previously been convicted of an offense under Section 371.041, the offense is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

For effective date and applicability provisions of the 1991 Act, see Historical and Statutory Note following § 371.041.

Cross References

Punishment,
Class A misdemeanor, see V.T.C.A. Penal Code, § 12.21.
Class C misdemeanor, see V.T.C.A. Penal Code, § 12.23.

§ 371.043. Civil Penalty

(a) Except as provided by Subsection (c), a person who violates this chapter or a rule or order adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each act of violation and for each day of violation.

(b) A civil penalty recovered in a suit brought by a local government under this section shall be divided equally between the state and the local government that brought the suit. The state shall deposit its recovery to the credit of the used oil recycling fund.

(c) The penalty imposed by this section does not apply to failure to pay a fee under Section 371.062 or failure to file a report under Section 371.024 or 371.026.

(d) The department, a local government in whose jurisdiction the violation occurs, or the state may bring suit to recover a penalty under this section.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

For effective date and applicability provisions of the 1991 Act, see Historical and Statutory Note following § 371.041.

§ 371.044. Injunctive Relief

(a) If it appears that a violation or threat of violation of this chapter or any rule or order adopted under this chapter has occurred or is about to occur and is causing or may cause immediate injury or constitutes a significant threat to the health, welfare, or personal property of a citizen or a local government, the department, the local government, or the state may bring suit in district court for injunctive relief to restrain the violation or the threat of violation.

(b) In a suit for injunctive relief, the court may grant any injunctive or mandatory relief warranted by the facts, including a temporary restraining order, a temporary injunction, or a permanent injunction. Injunctive relief shall be granted without the requirement for a bond or other undertaking by any governmental entity seeking the injunction.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

For effective date and applicability provisions of the 1991 Act, see Historical and Statutory Note following § 371.041.

§ 371.045. Venue

A suit for injunctive relief, for recovery of a civil penalty, or both, may be brought in:

(1) the county in which the defendant resides;

(2) the county in which the violation or threat of violation occurs; or

(3) Travis County.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

For effective date and applicability provisions of the 1991 Act, see Historical and Statutory Note following § 371.041.

[Sections 371.046 to 371.060 reserved for expansion]

SUBCHAPTER D. USED OIL RECYCLING FUND; FEES

§ 371.061. Used Oil Recycling Fund

(a) The used oil recycling fund is in the state treasury.

(b) The fund consists of:

(1) fees collected under Sections 371.024, 371.026, and 371.062;

(2) interest and penalties imposed under this chapter for late payment of fees, failure to file a report, or other violations of this chapter; and

(3) gifts, grants, donations, or other financial assistance the department is authorized to receive under Section 371.027.

(c) Except as provided by Subsection (d), the department may use money in the fund for purposes authorized by this chapter, including:

(1) public education;

(2) grants;

(3) registration of used oil collection centers, used oil transporters, used oil marketers, and used oil recyclers; and

(4) administrative costs of implementing this chapter.

Text of Subsec. (d) effective until Jan. 1, 1997

(d) The department shall transfer 25 percent of the fees collected under Section 371.062 to the Texas Water Commission for the sole purpose of restoring the environmental quality of those sites in the state that the commission has identified as having been contaminated through improper used oil management and for which other funds from a potentially responsible party or the federal government are not sufficient. This subsection expires on January 1, 1997.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

§ 371.062. Fee on Sale of Automotive Oil

(a) In this section:

(1) "First sale" means the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer. The term does not include the sale of automotive oil exported from this state to a location outside this state for the purpose of sale or use outside this state. This term does not include sales of automotive oils for resale to or use by vessels engaged in foreign or interstate commerce.

(2) "Importer" means any person who imports or causes to be imported automotive oil into this state for sale, use, or consumption.

(3) "Oil manufacturer" means any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil.

(b) An oil manufacturer or importer who makes a first sale of automotive oil is liable for a fee.

(c) Each oil manufacturer or importer required to pay a fee under this section shall:

(1) prepare and maintain, on a form provided or approved by the comptroller, a report of each first sale of automotive oil by the person and the price received;

(2) retain the invoice or a copy of the invoice or other appropriate record of the sale for four years from the date of sale; and

(3) on or before the 25th day of the month following the end of each calendar quarter, file a report with the comptroller and remit to the comptroller the amount of fees required to be paid for the preceding quarter.

(d) Records required to be maintained under Subsection (c) shall be available for inspection by the comptroller at all reasonable times.

(e) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(f) Except as provided by this section, Chapters 101 and 111 through 113, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(g) The fee imposed under this section is two cents per quart or eight cents per gallon of automotive oil. The department shall monitor the unobligated balance of the used oil recycling fund and shall adjust the fee rate to meet expenditure requirements of the used oil recycling program and to maintain an appropriate fund balance. The fee imposed under this section may not exceed five cents per quart or 20 cents per gallon of automotive oil. On or before September 1 of each year, the department and the comptroller jointly shall issue notice of the effective fee rate for the next fiscal year.

(h) A person required to pay a fee under this section may retain one percent of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(i) The comptroller may deduct a percentage of the fees collected under this section in an amount sufficient to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of fees and all penalties and interest collected under this section shall be deposited to the credit of the used oil recycling fund.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 24(f) of the 1991 act provides:

"Section 371.062, Health and Safety Code, as added by this Act, applies only to a first sale of automotive oil that occurs on or after January 1, 1992."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

Cross References

Civil penalties, application, see § 371.043.
Used oil recycling fund, contributions from fees collected under this section, see § 371.061.

United States Code Annotated

Energy conservation program for consumer products other than automobiles, see 42 U.S.C.A. § 6291 et seq.

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361.565. Endangerment Offenses.
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SUBCHAPTER S. VOLUNTARY CLEANUP PROGRAM

361.601. Definitions.
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361.612. Public Participation.
361.613. Cost Report; Budget Allocation.

Law Review and Journal Commentaries

Environmental regulation of health care facilities: A prescription for compliance. Margaret M. Menicucci and Cheryl L. Coon, 47 SMU L.Rev. 537 (1994).

SUBCHAPTER A. GENERAL PROVISIONS

Administrative Code References

Natural Resource Conservation Commission, municipal solid waste, see 30 TAC § 330.1 et seq.

Law Review and Journal Commentaries

Bankruptcy—The Last Environmental Loophole? Debra L. Baker, 34 S.Tex.L.Rev. 379 (1993).

§ 361.001. Short Title

United States Supreme Court

Hazardous waste workers, occupational safety and health standards for training, testing and licensing, preemption, see Gade v. National Solid Wastes Management Ass'n, U.S.Ill.1992, 112 S.Ct. 2374, 505 U.S. 88, 120 L.Ed.2d 73.

§ 361.002. Policy; Findings

Notes of Decisions

2. Construction and application

Language of Solid Waste Disposal Act (SWDA) indicated that Texas Natural Resources Conservation Commission (TNRCC) had authority to regulate transportation of solid waste for environmental purposes, rather than for purposes of preserving highways or regulating trucking, and, thus, Railroad Commission was not precluded from using its regulatory powers to assure economic health of transportation industry and overall quality and safety of state highways, even if cargo being transported was solid waste. Railroad Com'n of Texas v. Waste Management of Texas, Inc. (App. 3 Dist. 1994) 880 S.W.2d 835, rehearing overruled.

Railroad Commission and Texas Natural Resources Conservation Commission (TNRCC) exercise concurrent jurisdiction over transportation of solid waste as each regulates different aspect of activity. Railroad Com'n of Texas v. Waste Management of Texas, Inc. (App. 3 Dist. 1994) 880 S.W.2d 835, rehearing overruled.

§ 361.003. Definitions

(2) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

~~(3) "Class I nonhazardous industrial solid waste" means any Class I industrial solid~~ waste that has not been identified or listed as a hazardous ~~waste by the administrator of~~ the United States Environmental ~~Protection Agency~~ under the federal Solid Waste Disposal Act, ~~as amended~~ by the Resource Conservation and Recovery Act of 1976 (42 ~~U.S.C. Section 6901 et seq.).~~

~~(4) "Commercial hazardous waste management facility" means any hazardous waste~~ management facility that accepts hazardous waste or PCBs for a charge, ~~except a captured~~ facility or a facility that accepts waste only from other ~~facilities owned~~ or effectively controlled by the same person, where "~~captured facility~~" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing ~~complex.~~

(5) "Commission" means the Texas Natural Resource Conservation Commission.

(6) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(7) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(8) "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(9) "Executive director" means the executive director of the commission.

(10) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(11) "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

(B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(12) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(13) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(14) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(15) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(16) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(17) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(18) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

~~(19) "Motor vehicle" has the meaning assigned by Section 2(b), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).~~

(20) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(21) "Notice of intent to file an application" means the notice filed under Section 361.063.

(22) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(23) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(24) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(25) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(26) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the commission under that law.

~~(27) "Recycling" means the legitimate use, reuse, or reclamation of solid waste.~~

(28) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law,[1] or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(29) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(30) "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(31) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(32) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the commission.

(33) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(34) This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

~~(35) This subdivision is effective on delegation of the Resource Conservation and~~ Recovery Act authority to the Railroad Commission of Texas. Subject to ~~the~~ limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), ~~"solid~~ waste" means garbage, rubbish, refuse, sludge from a waste ~~treatment~~ plant, water supply treatment plant, or air pollution control ~~facility, and other~~ discarded material, including solid, liquid, semisolid, ~~or~~ contained ~~gaseous~~ material resulting from industrial, municipal, commercial, mining, and ~~agricultural operations and from community and institutional activities. The term:~~

~~(A) does not include:~~

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

~~(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.~~

(36) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(37) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the commission.

(38) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

~~(39) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any land or surface or subsurface water in the state that renders the land or water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare or impairs the usefulness or the public enjoyment of the land or water for any lawful or reasonable purpose.~~

Amended by Acts 1995, 74th Leg., ch. 76, § 11.18, eff. Sept. 1, 1995.

1 42 U.S.C.A. § 9604.

Cross References

Municipal airports, treatment of hazardous waste as defined by this section, necessity of municipal permission, see V.T.C.A., Transportation Code § 22.076.

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Acts 1995, 74th Leg., ch. 76, § 11.19, eff. Sept. 1, 1995 amended the subchapter heading.

Administrative Code References

Natural Resource Conservation Commission, sludge use, disposal, and transportation, see 30 TAC § 312.1 et seq.

§ 361.011. Commission's Jurisdiction: Municipal Solid Waste

(a) The commission is responsible under this section for the management of municipal solid waste, excluding hazardous municipal waste, and shall coordinate municipal solid waste activities, excluding activities concerning hazardous municipal waste.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of municipal solid waste, excluding management of hazardous municipal waste, by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter relating to municipal solid waste management, excluding management of hazardous municipal

Notes of Decisions

~~Requirements 1~~

1. Requirements

Parties opposing issuance of permit to build solid waste facility were not prejudiced by Water Commission's failure to require applicant to make showing, as part of application, of waste characteristics, emissions estimates, and dispersion modeling concerning heat-surge vent as item independent of other emissions sources; requisite demonstration was required only for unit as a whole, and, since requirement of demonstration was not intended primarily to confer procedural benefits upon a party to case, Commission was free to relax requirement. Smith v. Houston Chemical Services, Inc. (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, error granted, order withdrawn; error denied, rehearing of writ of error overruled.

§ 361.0641. Notice to State Senator and Representative

On receiving an application for, or notice of intent to file an application for, a permit to construct, operate, or maintain a facility to store, process, or dispose of solid waste or hazardous waste, the commission shall send notice of the application or the notice of intent to the state senator and representative who represent the area in which the facility is or will be located.

~~Amended by Acts 1995, 74th Leg., ch. 76, § 11.39, eff. Sept. 1, 1995.~~

§ 361.066. Submission of Administratively Complete Permit Application

(a) An applicant must submit any portion of an application that the commission determines is necessary to make the application administratively complete not later than the 270th day after the applicant receives notice from the commission that the additional information or material is needed.

[See main volume for (b)]

Amended by Acts 1995, 74th Leg., ch. 76, § 11.40, eff. Sept. 1, 1995.

~~§ 361.0665. Notice of Intent to Obtain Municipal Solid Waste Permit~~

[See main volume for (a)]

(b) Notice must include:

(1) a description of the location or proposed location of the facility;

(2) a statement that a person who may be affected by the facility or proposed facility is entitled to request a hearing from the commission;

(3) the manner in which the commission may be contacted for further information; and

(4) any other information that the commission by rule requires.

(c) If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located as defined by commission rule.

(d) In addition, the commission shall publish notice in the Texas Register.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.41, eff. Sept. 1, 1995.

Notes of Decisions

Prejudice 1

1. Prejudice

In considering application for permit to build solid waste facility, applicant complied with notice requirement of Solid Waste Disposal Act by giving published notice, and, even if it did not, opponents of permit failed to show prejudice from any failure to give notice. Smith v. Houston Chemical Services, Inc. (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, error granted, order withdrawn; error denied, rehearing of writ of error overruled.

~~considered to hold a registration, if registration is required, under Section 361.092, Health and Safety Code, as amended by this Act."~~

§ 361.094. Permit Holder Exempt From Local License Requirements

If a permit is issued, amended, renewed, or extended by the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or from a county.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.54, eff. Sept. 1, 1995.

~~§ 361.0961. Restrictions on Authority of Local Government or Other Political Subdivision~~

(a) A local government or other political subdivision may not adopt an ordinance, rule, or regulation to:

(1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law;

(2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or

(3) assess a fee or deposit on the sale or use of a container or package.

(b) This section does not prevent a local government or other political subdivision from complying with federal or state law or regulation. A local government or other political subdivision may take any action otherwise prohibited by this section in order to comply with federal requirements or to avoid federal or state penalties or fines.

(c) This section does not limit the authority of a local government to enact zoning ordinances.

Added by Acts 1993, 73rd Leg., ch. 1045, § 12, eff. Sept. 1, 1993.

§ 361.102. Prohibition on Permit for Hazardous Waste Management Facilities Within a Certain Distance of Residence, Church, School, Day Care Center, Park, or Public Drinking Water Supply

(a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(b) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

[See main volume for (c)]

(d) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries, consistent with the purposes of this chapter.

[See main volume for (e) and (f)]

~~Amended by Acts 1995, 74th Leg., ch. 76, § 11.55, eff. Sept. 1, 1995.~~

Vernon's

TEXAS CODES ANNOTATED

Volume 3

HEALTH AND SAFETY CODE

Sections 365.001 to 480

1997
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(d) Fees collected under this section shall be deposited in the state treasury to the credit of the hazardous and solid waste fee fund.

Amended by Acts 1993, 73rd Leg., ch. 564, § 1.06, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, § 8, eff. Aug. 30, 1993.

Historical and Statutory Notes

1993 Legislation

Sections 2.01(11) and 2.02 of Acts 1993, 73rd Leg., ch. 564, provide:

"Sec. 2.01. The following funds and accounts and revenues authorized to be deposited to these funds and accounts are exempt from the provisions of Subsection (h), Section 403.094, Government Code. Except as amended by this Act, these funds and accounts are dedicated to the purposes for which they were established under the applicable provisions of law. The comptroller may, with the concurrence of the state treasurer, establish any of the following funds as dedicated accounts in the general revenue fund, provided that such accounts maintain any attributes authorized under provisions of law:"

"(11) the hazardous and solid waste fees fund authorized under Sections 361.132 and 370.008, Health and Safety Code, as amended by this Act;"

"Sec. 2.02. The funds and accounts described in Section 2.01 of this Act are further exempt from any provision of Subsection (b), Section 403.095, Government Code, that would authorize the expenditure or transfer of dedicated revenues inconsistent with Section 2.01 of this Act. Nothing in this section shall otherwise limit the authority of the legislature to appropriate funds from any fund or account."

Acts 1993, 73rd Leg., ch. 746, §§ 9(11) and 10 provide:

"Sec. 9. The following funds and accounts, and revenues authorized to be deposited to these funds and accounts, are exempt from the provisions of Subsection (h), Section 403.094, Government Code. Except as amended by this Act, these funds and accounts are dedicated to the purposes for which they were established under the applicable provisions of law. The comptroller may, with the concurrence of the treasurer, establish any of the following funds as dedicated accounts in the general revenue fund, provided that such accounts maintain any attributes authorized under provisions of law:"

"(11) hazardous and solid waste fees fund authorized under Sections 361.132 and 370.008, Health and Safety Code, as amended by this Act;"

"Sec. 10. The funds and accounts described in Section 9 of this Act are further exempt from any provision of Subsection (b), Section 403.095, Government Code, that would authorize the expenditure or transfer of dedicated revenues inconsistent with Section 9 of this Act. Nothing in this section shall otherwise limit the authority of the legislature to appropriate funds from any fund or account."

CHAPTER 371. USED OIL COLLECTION, MANAGEMENT, AND RECYCLING

SUBCHAPTER A. GENERAL PROVISIONS

Section
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SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES

371.041. Actions Prohibited.
371.042. Criminal Penalties.
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SUBCHAPTER D. USED OIL RECYCLING FUND; FEES

371.061. Used Oil Recycling Fund.
371.062. Fee on Sale of Automotive Oil.
371.063. Annual Reporting Requirement.

SUBCHAPTER A. GENERAL PROVISIONS

§ 371.001. Short Title

This chapter may be cited as the Texas Used Oil Collection, Management, and Recycling Act.

Amended by Acts 1995, 74th Leg., ch. 887, § 1, eff. Sept. 1, 1995.

§ 371.002. Findings

The legislature finds that:

(1) when properly managed and recycled, used oil is a valuable energy resource;

(2) used oil can be recycled into a number of different products;

(3) improper disposal of used oil is a significant environmental problem and a waste of a potentially valuable energy resource;

(4) there is a need for an expanded statewide network of used oil collection sites for private citizens who change their own motor oil;

(5) the private sector, with incentives, is best equipped to establish and operate used oil collection centers that are convenient for the public;

(6) the need for publicly operated used oil collection centers is greatest in more sparsely populated areas of the state and should diminish over time;

(7) the United States Environmental Protection Agency has issued final regulations that properly classify and regulate used oil and used oil filters in accordance with the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

(8) the current used oil and used oil filter program in this state imposes more stringent management requirements than the regulations of the United States Environmental Protection Agency;

(9) limited public money is needed to finance public and private infrastructure investments to collect, manage, and recycle used motor oil;

(10) the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) establish a balanced approach to the objectives of preserving a valuable resource and protecting the natural environment; and

(11) recycling, reuse, treatment, or proper disposal of used oil produces a more advantageous cost-benefit ratio in accomplishing the goals of state law, and these considerations should be included in the source reduction and waste minimization plans adopted under Section 361.505 to the extent applicable.

Amended by Acts 1995, 74th Leg., ch. 887, § 1, eff. Sept. 1, 1995.

§ 371.0025. Purpose and Scope

(a) The purposes of this chapter are to:

(1) ensure that this state's used oil program is consistent with and not more stringent than the federal program for the management of used oil under 40 C.F.R. Part 279 unless otherwise required by state or federal law; and

(2) establish a program to promote public and private do-it-yourselfer used oil collection centers and used oil collection centers.

(b) This chapter does not apply to used oil:

(1) generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code;

(2) exempted under 40 C.F.R. Section 279.10(g) because the oil has been introduced into a crude oil pipeline or is being processed at a petroleum refining facility; or

(3) generated through other activities exempted under 40 C.F.R. Part 271 or 279.

(c) This chapter does not apply to a used oil filter generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Added by Acts 1995, 74th Leg., ch. 887, § 2, eff. Sept. 1, 1995.

§ 371.003. Definitions

In this chapter:

(1) "Aboveground tank" means a tank used to store or process oil that is not an underground storage tank as defined by 40 C.F.R. Section 280.12.

(2) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or

truck. The term includes oil that is not labeled specifically for that use but is suitable for that use according to generally accepted industry specifications.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

(4) "Container" means a portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(5) "Do-it-yourselfer used oil collection center" means a site or facility that accepts or aggregates and stores used oil collected only from household do-it-yourselfers. A registered do-it-yourselfer used oil collection center that is also a used oil generator may commingle household do-it-yourselfer used oil with the used oil it generates.

(6) "Existing tank" means a tank that is used for the storage or processing of used oil and that as of September 1, 1995, is in operation or is being installed. A tank is being installed if the owner or operator has obtained all necessary federal, state, and local approvals or permits and:

(A) a continuous on-site installation program has begun; or

(B) the owner or operator has entered into contractual obligations for installation of the tank that cannot be cancelled or modified without substantial loss.

(7) "Household do-it-yourselfer used oil" means oil that is derived from a household, including used oil generated by an individual through the maintenance of the individual's personal vehicle or equipment.

(8) "Household do-it-yourselfer used oil generator" means an individual who generates household do-it-yourselfer used oil.

(9) "New tank" means a tank for the storage or processing of used oil the installation of which begins on or after September 1, 1995.

(10) "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes.

(11) "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used-oil-derived products, including blending used oil with virgin petroleum products, blending used oils to meet fuel specifications, filtration, simple distillation, chemical or physical separation, and rerefining.

(12) "Reclaiming" means processing material to recover a usable product or regenerating material, including recovering lead from a spent battery and regenerating spent solvents.

(13) "Recycling" means:

(A) preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) burning used oil for energy recovery.

(14) "Rerefining" means applying processes to material composed primarily of used oil to produce high-quality base stocks for lubricants or other petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydrotreating, or polishing.

(15) "Rerefining distillation bottoms" means the heavy fraction of filtered and dehydrated used oil produced by vacuum distillation. The composition of still bottoms varies with column operation and feedstock.

(16) "Tank" means a stationary device designed to contain an accumulation of used oil that is constructed primarily of nonearthen materials that provide structural support, including wood, concrete, steel, and plastic.

(17) "Used oil" means oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.

(18) "Used oil aggregation point" means a site or facility that accepts, aggregates, or stores used oil collected from:

(A) used oil generation sites owned or operated by the owner or operator of the used oil aggregation point and transported to the used oil aggregation point in shipments of not more than 55 gallons; or

(B) household do-it-yourselfers.

(19) "Used oil burner" means a facility in which used oil not meeting the specifications in 40 C.F.R. Section 279.11 is burned for energy recovery in a device listed in 40 C.F.R. Section 279.61(a).

(20) "Used oil collection center" means a site or facility that is registered by the commission to manage used oil and accepts, aggregates, or stores used oil collected from:

(A) used oil generators regulated under 40 C.F.R. Part 279, Subpart C, who transport used oil to the used oil collection center in shipments of not more than 55 gallons under 40 C.F.R. Section 279.24; or

(B) household do-it-yourselfers.

(21) "Used oil fuel marketer" means a person who:

(A) directs a shipment of used oil not meeting the specifications in 40 C.F.R. Section 279.11 from the person's facility to a used oil burner; or

(B) first claims that used oil to be burned for energy recovery meets the used oil specifications in 40 C.F.R. Section 279.11.

(22) "Used oil generator" means a person, by site, whose act or process:

(A) produces used oil; or

(B) first causes used oil to become subject to regulation.

(23) "Used oil processor or rerefiner" means a facility that processes used oil.

(24) "Used oil transfer facility" means a transportation-related facility, including a loading dock, parking area, storage area, or other area, where shipments of used oil are held for more than 24 hours and not more than 35 days during the normal course of transportation. A transfer facility that stores used oil for more than 35 days is subject to 40 C.F.R. Part 279, Subpart F.

(25) "Used oil transporter" means a person who:

(A) transports used oil; or

(B) owns or operates a used oil transfer facility.

Amended by Acts 1993, 73rd Leg., ch. 899, § 4.05, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, § 11.122, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 3, eff. Sept. 1, 1995.

Historical and Statutory Notes

1995 Legislation

This section was amended by Acts 1995, 74th Leg., ch. 76, § 11.122. However, § 1.02(b) of Acts 1995, 74th Leg., ch. 76 provides:

"If any provision of this Act conflicts with a statute enacted by the 74th Legislature, Regular Session, 1995, the statute controls."

SUBCHAPTER B. USED OIL RECYCLING PROGRAM

§ 371.021. Public Education

The commission shall conduct an education program to inform the public of the need for and benefits of the collection and recycling of used oil and used oil filters. The program shall:

(1) establish, maintain, and publicize a used oil information center that prepares and disperses materials and information explaining laws and rules regulating used oil and informing the public of places and methods for proper recycling of used oil;

(2) encourage the voluntary establishment of used oil collection and recycling programs by private businesses and organizations and by local governments and provide technical assistance to persons who organize those programs; and

(3) encourage local governments to procure recycled automotive and industrial oils and oils blended with recycled oils, if those oils meet equipment manufacturer's specifications.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

~~§ 371.022. Notice by Retail Dealer~~

A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the commission:

(1) informing the public that improper disposal of used oil is prohibited by law;

(2) containing instructions for disposal of used oil filters; and

(3) prominently displaying the toll-free telephone number of the state used oil information center established under Section 371.021.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995

§ 371.023. Grants to Local Governments and Private Entities

(a) The commission shall develop a grant program for local governments and private entities that encourages the collection, reuse, and recycling of household do-it-yourselfer used oil.

(b) The commission may approve a grant for any project that uses one or more of the following programs:

(1) curbside pickup of containers of household do-it-yourselfer used oil by a local government or its representative;

(2) retrofitting of municipal solid waste equipment to facilitate curbside pickup of household do-it-yourselfer used oil;

(3) establishment of do-it-yourselfer used oil collection centers and used oil collection centers at locations accessible to the public, including landfills, fire stations, retail stores, quick lubrication centers, and automobile repair shops;

(4) provision of containers and other materials and supplies that can be used to store household do-it-yourselfer used oil for pickup or delivery to a do-it-yourselfer used oil collection center in an environmentally sound manner; and

(5) any other activity the advisory committee established under Subsection (c) determines will encourage the proper recycling of household do-it-yourselfer used oil.

(c) The commission shall appoint an advisory committee for the used oil grant program. The advisory committee consists of seven members who serve at the pleasure of the commission and represent oil manufacturers as defined by Section 371.062, operators of used oil collection centers, and local governments. The advisory committee members serve without compensation and are not entitled to reimbursement for expenses incurred in the performance of their duties. The advisory committee shall:

(1) recommend criteria for grants;

(2) establish guidelines for allowable administrative expenses; and

(3) recommend grant recipients to the commission based on the used oil collection needs of this state.

(d) The commission by rule shall:

(1) establish procedures for the application for and criteria for the award of grants under this section; and

(2) adopt guidelines for allowable administrative expenses in accordance with guidelines established by the advisory committee.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

Historical and Statutory Notes

1995 Legislation

This section was amended by Acts 1995, 74th Leg., ch. 76, § 11.123. However, § 1.02(b) of Acts 1995, 74th Leg., ch. 76 provides:

"If any provision of this Act conflicts with a statute enacted by the 74th Legislature, Regular Session, 1995, the statute controls."

§ 371.024. Collection Facilities

~~(a) All appropriate businesses and government agencies are encouraged to serve as do-it-yourselfer used oil collection centers or used oil collection centers.~~

(b) A do-it-yourselfer used oil collection center and a used oil collection center shall:

(1) register biennially with the commission; and

(2) report annually to the commission the amounts of used oil collected by the center from the public.

~~(c) The commission shall adopt rules governing the registration of and reporting by do-it-~~ yourselfer used oil collection centers and used oil collection centers.

(d) The commission by rule shall adopt standards for managing and operating a do-it-yourselfer used oil collection center or a used oil collection center.

(e) The commission may impose a registration fee in an amount sufficient to cover the actual cost of registering ~~do-it-~~yourselfer used oil collection centers and used oil collection centers. ~~A private~~ entity that serves voluntarily as a do-it-yourselfer used oil collection ~~center or a used oil collection center is exempt from the registration fee.~~

Amended by Acts 1995, 74th Leg., ch. 76, § 11.124, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

~~§ 371.0245. Reimbursement of Used Oil Collection Center's Hazardous Waste~~ Expense

(a) The commission, on proper application, shall reimburse the owner or operator of an eligible registered do-it-yourselfer used oil collection center or a used oil collection center for costs associated with the collection center's disposal of:

(1) household do-it-yourselfer used oil collected by the collection center that, unknown to the center at the time of collection, contains hazardous wastes or is unfit for recycling;

(2) household do-it-yourselfer used oil collected by the collection center that has been commingled with oils described in Subdivision (1) and is unsuitable for recycling; or

(3) contaminated used oil left at the collection center as used oil after posted business hours and without the knowledge of the collection center.

(b) A registered do-it-yourselfer used oil collection center or used oil collection center is eligible for reimbursement if it demonstrates to the satisfaction of the commission that:

(1) the center has established procedures to minimize the risk that the center will mix the used oil the center generates or collects from the public with hazardous wastes, especially halogenated wastes;

(2) the center accepts not more than:

(A) five gallons of used oil from any person at any one time if the center is a registered do-it-yourselfer used oil collection center; or

(B) 55 gallons of used oil from any person at one time if the center is a registered used oil collection center; and

(3) the center can document to the satisfaction of the commission the volume of used oil the center collects from the public during any period under review by:

(A) providing a process by which all individuals leaving household do-it-yourselfer used oil at the center are required to provide their names, addresses, and the approximate amounts of used oil brought to the collection center; or

(B) another method approved by the commission.

(c) For the purpose of Subsection (b)(2), the owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may presume that a quantity of used oil collected from a member of the public that does not exceed the applicable collection limit established by that subsection is not mixed with a hazardous substance if the owner or operator acts in good faith in the belief the oil is generated from the individual's personal activity.

~~(d) In any state fiscal year, a registered do-it-yourselfer used oil collection center or used~~ oil collection center may not be reimbursed for more than $7,500 in total eligible disposal costs, subject to Section 371.0246(d).

(e) Reimbursements made under this section shall be paid out of the used oil recycling fund and may not exceed an aggregate amount of $500,000 each fiscal year.

Added by Acts 1993, 73rd Leg., ch. 899, § 4.07, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

Historical and Statutory Notes

1993 Legislation

Sections 4.10 and 4.11 of the 1993 Act provide:

"Sec. 4.10. The change in law made by Sections 371.0245 and 371.0246, Health and Safety Code, as added by this article, applies only to costs incurred by an eligible registered public used oil collection center on or after September 1, 1993.

"Sec. 4.11. Not later than December 1, 1993, the Texas Water Commission or its successor shall adopt any rules necessary to administer the reimbursement program established by Sections 371.0245 and 371.0246, Health and Safety Code, as added by this article."

§ 371.0246. Procedures for Reimbursement

(a) An owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may apply for reimbursement from the commission.

(b) An application for reimbursement shall be submitted on a form approved or provided by the commission.

(c) An application must contain:

(1) the name, address, and telephone number of the applicant;

(2) the name, mailing address, location address, and commission registration number of the registered do-it-yourselfer used oil collection center or used oil collection center from which the contaminated oil was removed;

(3) the name, address, telephone number, and commission registration number of the hazardous waste transporter used to dispose of the contaminated used oil;

(4) a copy of any shipping documents that accompanied the transportation of the shipment of used oil;

(5) a copy of each invoice for which reimbursement is requested and evidence that the amount shown on the invoice has been paid in full in the form of:

(A) canceled checks;

(B) business receipts from the person who performed the work; or

(C) other documentation approved by the commission;

(6) a waste-characterization or similar documentation required before acceptance of a hazardous waste by the disposal facility that accepted the contaminated used oil for treatment or disposal; and

(7) any other information that the executive director may reasonably require.

(d) All claims for reimbursement filed under this section and Section 371.0245 are subject to funds available for disbursement in the used oil recycling fund and to Section 371.0245(e). This subchapter does not create an entitlement to money in the used oil recycling fund or any other fund.

Added by Acts 1993, 73rd Leg., ch. 899, § 4.07, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

Historical and Statutory Notes

1993 Legislation

Sections 4.10 and 4.11 of the 1993 Act provide:

"Sec. 4.10. The change in law made by Sections 371.0245 and 371.0246, Health and Safety Code, as added by this article, applies only to costs incurred by an eligible registered public used oil collection ~~center on or after September 1, 1993.~~

"Sec. 4.11. Not later than December 1, 1993, the Texas Water Commission or its successor shall adopt any rules necessary to administer the reimbursement program established by Sections 371.0245 and 371.0246, Health and Safety Code, as added by this article."

§ 371.025. Limitation of Liability

(a) A person may not recover from the owner, operator, or lessor of a registered do-it-yourselfer used oil collection center or used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

(1) the owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);

(2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and

(3) the collection center is in compliance with management standards adopted by the commission.

(b) For purposes of this section, the owner, operator, or lessor of a do-it-yourselfer used oil collection center or a used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a do-it-yourselfer used oil collection center or a used oil collection center. This section does not apply to grossly negligent activities related to the operation of a do-it-yourselfer used oil collection center or a used oil collection center.

(d) This section does not affect or modify the obligations or liability of any person other than the owner, operator, or lessor of the collection center under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances.

(e) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a collection center with regard to services other than accepting used oil from the public.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.125, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

§ 371.026. Registration of Used Oil Handlers Other Than Generators

(a) The commission shall adopt rules governing registration and reporting of used oil handlers other than generators. The rules shall require that a used oil handler other than a generator:

(1) register biennially with the commission;

(2) report annually the sources of used oil handled during the preceding year, the quantity of used oil received, the date of receipt, and the destination or end use of the used oil;

(3) provide evidence of familiarity with applicable state laws and rules and management procedures applicable to used oil handling; and

(4) provide proof of liability insurance or other evidence of financial responsibility for any liability that may be incurred in handling used oil.

(b) The commission by rule shall adopt reasonable management and safety standards for the handling of used oil.

(c) The commission may impose a registration fee in an amount sufficient to cover the actual cost of registering used oil handlers other than generators.

(d) A used oil transporter may consolidate or aggregate loads of used oil for purposes of transportation but may not process used oil, except that a used oil transporter may conduct incidental processing operations, including settling and water separation, that occur in the normal course of the transportation of used oil but that are not designed to produce, or make more amenable for the production of, used-oil-derived products or used oil fuel.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.126, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

Historical and Statutory Notes

1995 Legislation

This section was amended by Acts 1995, 74th Leg., ch. 76, § 11.126. However, § 1.02(b) of Acts 1995, 74th Leg., ch. 76 provides:

"If any provision of this Act conflicts with a statute enacted by the 74th Legislature, Regular Session, 1995, the statute controls."

~~§ 371.027. Gifts and Grants~~

The commission may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under this chapter.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.127, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

§ 371.028. Rules

Not later than January 1, 1996, the commission shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by this chapter. Unless otherwise required by federal or state law, the rules, standards, and procedures must be consistent with and not more stringent than the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

Amended by Acts 1995, 74th Leg., ch. 76, § 11.127, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 4, eff. Sept. 1, 1995.

SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES

§ 371.041. Actions Prohibited

[See main volume for (a)]

(b) A person commits an offense if the person:

(1) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

(2) knowingly mixes or commingles used oil with waste that is to be disposed of in landfills or directly disposes of used oil on land;

(3) knowingly transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil within the state:

(A) in violation of standards or rules for the management of used oil; or

(B) without first complying with the registration requirements of Section 371.026 and rules adopted under that section;

(4) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;

(5) violates an order of the commission to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or

(6) intentionally makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of program compliance.

(c) It is an exception to the application of Subsection (b) if a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(d) It is an exception to the application of Subsection (b)(2) if the mixing or commingling of used oil with waste that is to be disposed of in landfills is incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.128, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 5, eff. Sept. 1, 1995.

~~§ 371.042. Criminal Penalties~~

(a) Except as provided by Subsection (b), an offense under Section 371.041 is punishable by:

(1) a fine of not less than $100 or more than $10,000 for each act of violation or each day of a continuing violation;

(2) imprisonment for a term not to exceed five years; or

(3) both the fine and the imprisonment.

(b) If it is shown on the trial of an offense under Section 371.041 that the defendant has previously been convicted of an offense under Section 371.041, the offense is punishable by:

(1) a fine of not less than $200 or more than $20,000 for each act of violation or each day of a continuing violation;

(2) imprisonment for a term not to exceed 10 years; or

(3) both the fine and the imprisonment.

Amended by Acts 1995, 74th Leg., ch. 887, § 6, eff. Sept. 1, 1995.

Historical and Statutory Notes

1995 Legislation

Section 11 of the 1995 amendatory act provides:

"(a) The change in law made by this Act to Section 371.042, Health and Safety Code, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose."

§ 371.043. Civil Penalty

[See main volume for (a) and (b)]

(c) The penalty imposed by this section does not apply to failure to pay a fee under Section 371.062 or failure to file a report under Section 371.024.

(d) The commission, a local government in whose jurisdiction the violation occurs, or the state may bring suit to recover a penalty under this section.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.129, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, § 7, eff. Sept. 1, 1995.

§ 371.044. Injunctive Relief

(a) If it appears that a violation or threat of violation of this chapter or any rule or order adopted under this chapter has occurred or is about to occur and is causing or may cause immediate injury or constitutes a significant threat to the health, welfare, or personal property of a citizen or a local government, the commission, the local government, or the state may bring suit in district court for injunctive relief to restrain the violation or the threat of violation.

[See main volume for (b)]

Amended by Acts 1995, 74th Leg., ch. 76, § 11.130, eff. Sept. 1, 1995.

SUBCHAPTER D. USED OIL RECYCLING FUND; FEES

§ 371.061. Used Oil Recycling Fund

[See main volume for (a)]

(b) The fund consists of:

(1) fees collected under Sections 371.024, 371.026, and 371.062;

(2) interest and penalties imposed under this chapter for late payment of fees, failure to file a report, or other violations of this chapter; and

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* Copies of the Texas regulations that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164-0526.

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1994–Part One

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January 1, 1994



Published by
West Publishing Co.
St. Paul, Minn.

under authority of the Texas Secretary of State

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 305.50. Additional Requirements for an Application for a Solid Waste Permit

~~Unless otherwise stated, an application for a~~ permit to store, process, or dispose of solid waste shall meet the following requirements.

(1) Six copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes. Also to be submitted are listings of evidence of noncompliances concerning solid waste management by the permit holder in the preceding five years at the permitted site, listings of evidence of noncompliances concerning solid waste management in the preceding five years at any site owned, operated, or controlled by the applicant in the State of Texas, a summary of the attempts of the permit holder to correct the environmental violations, and an indication of whether the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by the Texas Solid Waste Disposal Act or by any rule of the commission. For purposes of this subsection, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13-270.26, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), (4), (b), and (c), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Such financial information may include, but is not limited to, the following:

(i) current and two previous years audited financial statements prepared in accordance with generally accepted auditing standards, including an opinion as to the fairness of the financial statements and accompanying notes;

(ii) current and two previous years Form 10-K annual reports filed with the Securities and Exchange Commission;

(iii) relevant information concerning investors and stockholders; and

(iv) information required by Code of Federal Regulations, Title 40, Part 264, Subpart H.

(C) If any of the information required to be disclosed under subparagraph (B) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(D) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency, that:

(i) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(E) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14-270.26. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

~~(5) An application for a new hazardous waste~~ landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment which is filed after January 1, 1986, which is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report documenting the potential ~~effects, if any, on the regional aquifer in the event~~ of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a registered professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such a release.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application shall also contain the following:

(A) copies of any relevant land use plans, adopted pursuant to the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is ~~filed, at the time the permit application is filed;~~

OFFICIAL

Texas Administrative Code

Title 30 Environmental Quality

1994–Part Two

Amendments effective through
January 1, 1994



Published by
West Publishing Co.
St. Paul, Minn.

under authority of the Texas Secretary of State

§ 335.6. Notification Requirements

~~(a) A person who intends to store, process, or~~ dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director in writing that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such storage, processing, or disposal is compliant with the terms of this chapter. Such information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide written notice to the executive director of any changes or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, and the geology where the facility is located to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(c) Any person who generates municipal hazardous waste in quantities equal to or greater than 1,000 kilograms in a calendar month or quantities of acute municipal hazardous waste in excess of quantities specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in a calendar month, or generates any quantities of industrial solid waste, shall notify the executive director of such activity on forms furnished or approved by the executive director. Such person shall also submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section ~~shall be in addition to information provided in any permit applications required by §335.2 of this title~~ (relating to Permit Required), or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide written notice to the executive director of any such changes or additional information, to that reported previously. If waste is recycled on-site or managed pursuant to §335.2(d) of this title (relating to Permit Required), the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(1) a description of the waste;

(2) a description of the process generating the waste;

(3) the composition of the waste;

(4) a proper hazardous waste determination which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations Part 261. Generators must determine whether such waste is hazardous as defined in 40 Code of Federal Regulations Part 261 and submit the results of that hazardous waste determination to the executive director;

(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:

(A) whether the waste is managed on-site and/or off-site;

(B) a description of the type and use of each on-site waste management facility unit;

(C) a listing of the wastes managed in each ~~unit;~~

~~(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title (relating to Permit Required).~~

(d) Persons generating more than 100 kilograms but less than 1,000 kilograms of hazardous municipal waste in any calendar month shall notify the executive director of such activity on forms provided by the executive director. Such person shall also submit to the executive director upon request such information as may be reasonably required to enable the executive director to determine whether the storage, processing, or disposal of such waste is compliant with the terms of these sections. Notifications submitted pursuant to this section shall be in addition to any information provided on any permit application required by §335.2 of this title (relating to Permit Required), or any reports required by §335.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). ~~Any person who provides~~ notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of any such change or of becoming aware of such new information provide written notice to the executive director of any such changes or additional information to that reported ~~previously~~.

(e) Except for conditionally exempt small quantity generators who only transport their own hazardous waste, any person who transports hazardous waste or Class I waste shall notify the executive director of such activity on forms furnished or approved by the executive director. Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

~~(f) Upon written request of the executive director~~, any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results of the analysis to the executive director.

~~(g) A person who stores, processes, or disposes of~~ industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 Code of Federal Regulations (CFR) §266.108 must provide a one-time signed, written notification to the United States Environmental Protection Agency and to the executive director indicating the following:

(1) the combustion unit is operating as a small quantity burner of hazardous waste;

(2) the owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards), and this subsection; and

(3) the maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

Source: The provisions of this §335.6 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, ~~1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13~~

~~ably be required to enable the executive director~~ to determine whether the closure or remediation is compliant with this section.

(d) Demonstration of conformance with risk reduction standards. Upon completion of a closure or remediation, the person shall demonstrate in a form acceptable to the executive director that the activity meets the intended risk reduction standards and any applicable closure criteria listed or referenced in this chapter. Any submittal to the executive director in response to this subsection shall be in the form of a plan or report that contains the information specified in §335.553 of this title (relating to Required Information).

Source: The provisions of this §335.8 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective June 28, 1993, 18 TexReg 3814.

Cross References: This Section cited in 30 TAC §335.551, (relating to Purpose, Scope, and Applicability).

§ 335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators

~~(a) Except with regard to nonhazardous recyclable~~ materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous waste or industrial solid waste shall comply with the following.

(1) The generator shall keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal and which, at a minimum, includes the information described in subparagraphs (A)-(G) of this paragraph. These records may be maintained in any format provided they are retrievable and easy to copy. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

(A) the description, character, and classification of each waste, and any changes and additional information required under §335.6(c) and (d) of this title (relating to Notification Requirements);

(B) the quantity generated;

(C) except for conditionally exempting small quantity generators regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally ~~Exempt Small Quantity Generators), the quantity held in on-site storage as of December 31~~ of each calendar year;

(D) the quantity processed or disposed of at each on-site facility unit during the calendar year;

(E) the method of storage, processing, or disposal (as described by codes in Appendix I, Table 2, titled Handling Codes for Storage, Processing, and Disposal Methods, of 40 Code of Federal Regulations Parts 264 and 265);

(F) the quantity shipped off-site for storage, processing, or disposal each calendar year, including the name, address, and location of each off-site facility and transporter receiving shipments;

(G) the location of all hazardous waste accumulation areas, situated at or near any point of generation, where hazardous wastes under the control of the operator of the process generating the wastes are placed in containers and initially accumulated without a permit or interim status in accordance with §335.69(d) of this title (relating to Accumulation Time).

(2) The generator shall submit to the Texas Water Commission on or before January 25 of each year an annual generation, storage, processing, and disposal summary for all hazardous and Class I wastes. The summary shall be submitted on forms furnished or approved by the executive director and shall contain at a minimum the information specified in paragraph (1) of this subsection. Upon written request by the generator, the executive director may authorize a modification in the reporting period.

(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) during the year, total on-site accumulation of hazardous and Class I waste did not equal or exceed 1,000 kilograms;

(B) during the year, no hazardous or Class I waste was processed or disposed of on-site;

(C) no acute hazardous waste was generated during the year or remained in storage at the end of the year;

(D) a total of less than 1,200 kilograms of hazardous waste, a total of less than 1,200 kilograms of Class I nonhazardous waste, and ~~a combined total of less than 1,200 kilograms~~

~~of hazardous waste and Class I nonhazardous~~ waste was generated during the year.

(4) Generators who are regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) and also meet the requirements of paragraph (3) of this subsection are not required to submit an ~~annual summary.~~

(b) A generator who ships his hazardous waste off-site must also include the information specified in §335.71 of this title (relating to Annual Reporting). Any generator who stores, processes, or disposes of hazardous waste on-site shall also submit an annual report in accordance with the requirements of §335.114 of this title (relating to Reporting Requirements).

Source: The provisions of this §335.9 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 27, 1992, 17 TexReg 8010.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.329, (relating to Records and Reports); 30 TAC §335.513, (relating to Documentation Required).

§ 335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste

(a) Except as provided in subsection (g) of this section, no generator of hazardous or Class I waste consigned to an off-site solid waste storage facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class I waste unless:

(1) for generators of Class I waste and generators of municipal hazardous waste shipping municipal hazardous waste which is part of a total quantity of municipal hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste storage, processing, or disposal facility in Texas, a Texas Water Commission (TWC) manifest on Form TWC-0311, and, if necessary, TWC-0311 is prepared;

~~(2) the generator is a conditionally exempt~~ small quantity generator (CESQG) of municipal hazardous waste;

(3) for generators of hazardous waste or Class I waste generated in Texas for consignment to another state the consignment state's manifest, if provided, or a TWC manifest if the consignment state does not provide a manifest, is prepared;

(4) for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a manifest from the primary exporter's state if that state supplies the manifest form and requires its use or a manifest from any source if the primary exporter's state does not supply the manifest form; and

(5) a generator designates on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternative facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Special Handling Instructions and Additional Information." If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste;

(6) for shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and ~~forwards the manifest to the designated facility.~~

(b) The manifest shall contain the following information.

~~(1) The manifest shall contain the generator's~~ United States Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest by the generator. This requirement does not apply if the waste being shipped is nonhazardous or if the generator is a conditionally exempt small quantity generator of hazardous waste.

(2) The manifest shall contain the total number ~~of pages used to complete the manifest, plus the~~

~~number of continuation sheets, if any (page 1 of _____).~~

(3) The manifest shall contain the name, mailing address, and telephone number of the generator.

(4) The manifest shall contain the telephone number where an authority agent of the generator ~~may be reached in the event of an emergency.~~

(5) The manifest shall contain the generator's Texas Water Commission (TWC) registration and/or permit number. Conditionally exempt small quantity generators shipping hazardous waste regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) may utilize the letters "CESQG" for their TWC generator registration number unless they have previously been assigned a TWC registration number.

~~(6) The manifest shall contain the first trans~~porter's company name.

(7) The manifest shall contain the first transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous or the transporter is a conditionally exempt small quantity generator ~~transporting only his own hazardous waste.~~

(8) The manifest shall contain the first transporter's state registration number. Conditionally exempt small quantity generators of hazardous waste are instructed to use the letters "CESQG" as the TWC state transporter's registration number when transporting their own hazardous waste unless they have previously been assigned a TWC registration number.

~~(9) The manifest shall contain a telephone~~ number where an authorized agent of first transporter may be reached in the event of an emergency.

(10) The manifest shall contain the second transporter's company name.

(11) The manifest shall contain the second transporter's 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous.

(12) The manifest shall contain the second transporter's state registration number.

(13) The manifest shall contain a telephone number where an authorized agent of the second transporter may be reached in the event of an ~~emergency.~~

~~(14) The manifest shall contain the company~~ name and site address of the facilities designated to receive the waste identified on the manifest and an alternate facility, if designated. Except as provided otherwise in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, generators shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof.

(15) The manifest shall contain the designated facility's EPA 12-digit identification number; however, this requirement does not apply if the waste being shipped is nonhazardous.

(16) The manifest shall contain the Texas Water Commission's or Texas Department of Health's state storage, processing, or disposal facility registration and/or permit number.

(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other waste, as required by United States Department of Transportation (DOT) regulations (49 Code of Federal Regulations §172.201(a)(1)), the Texas Water Commission has added a hazardous materials (HM) column on the manifest before the United States Department of Transportation description. When a waste shipment consists of both federally regulated materials and state regulated wastes, the hazardous materials (HM) column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials.

(18) The manifest shall contain the United States Department of Transportation proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 Code of Federal Regulations, Parts 171-177. If the shipment contains nonhazardous waste solely regulated by the Texas Water Commission, then the Texas Water Commission ~~waste classification code description should be~~

~~rector a letter describing the discrepancy and~~ attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

Source: The provisions of this §335.12 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.41, (relating to Purpose, Scope, and Applicability); 30 TAC §335.47, (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.223, (relating to Additional Permit Standards for Burners); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.251, (relating to Applicability and Requirements); 30 TAC §335.412, (relating to General Requirements for Processing, Storage, or Disposal Facilities).

§ 335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste

~~(a) The generator or primary exporter shall re~~tain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste) for a minimum of three years from the date of shipment by the generator or primary exporter or until the generator or primary exporter receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) Generators or primary exporters who ship to other states, or import shipments from outside the United States through Texas to other states, or export hazardous waste to a foreign country, shall prepare a shipment summary from the manifests, summarizing the quantity and classification of each waste shipment itemized by manifest document number. Such shipment summary shall be ~~prepared on forms provided or approved by the executive director and submitted to the Texas Water~~ Commission on or before the 25th day of each month for shipments originating during the previous month. A generator or primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. A generator or primary exporter required to comply with this subsection shall prepare and submit a shipment summary for only those months in which he actually made shipments. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of ~~this subsection.~~

(c) A generator of greater than 1,000 kilograms of hazardous waste in a calendar month or a generator of Class I waste who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class I waste.

(d) A generator of greater than 1,000 kilograms of hazardous waste in a calendar month or a generator of Class I waste must submit an exception report to the commission if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. Primary exporters of hazardous waste must submit an exception report to the executive director as set forth in §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments). The exception report must be retained by the generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class I waste and the results of those efforts.

~~(e) The periods of record retention required by~~ this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(f) ~~The~~ requirements of subsections (c) and (d) of ~~this section do not apply to generators generating~~

hazardous waste or Class I waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78(e)(1) or (2) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(g) A generator of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the executive director.

Source: The provisions of this §335.13 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month); 30 TAC §335.329, (relating to Records and Reports).

§ 335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste

(a) A transporter of hazardous waste or Class I waste shall retain a copy of each manifest signed by the generator or, in the case of exports of hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of the initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class I waste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the hazardous waste or waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

Source: The provisions of this §335.14 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §335.11, (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.411, (relating to General Requirements for Transporters).

§ 335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities

This section does not apply to owners and operators that store, process, or dispose of hazardous waste or Class I waste on-site and do not receive any Class I waste from off-site sources.

(1) The owner or operator of the storage, processing, or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator or primary exporter where appropriate.

(2) Except as provided in paragraph (6) of this section, the owner or operator shall prepare a monthly summary from his copy of all manifests received during the month (in those cases where a manifest is required), summarizing the quantity, character, transporter identity, and the method of storage, processing, and disposal of each hazardous waste or Class I waste shipment received, itemized by manifest document number.

(3) the efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

(4) the extent to which exported energy is utilized;

(5) the extent to which the device is in common and customary use as a boiler functioning primarily to produce steam, heated fluids, or heated gases; and

(6) other factors, as appropriate.

Source: The provisions of this §335.20 adopted to be effective May 29, 1986, 11 TexReg 2335.

Cross References: This Section cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.21, (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler).

§ 335.21. Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

(1) The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and §335.20 of this title (relating to Variance to be Classified as a Boiler).

(2) The executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the hearing (if any). Any person affected by a final decision of the executive director may petition the commission to review the decision. Any person affected by the final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures After Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a.

Source: The provisions of this §335.21 adopted to be effective May 29, 1986, 11 TexReg 2335.

Cross References: This Section cited in 30 TAC §335.18, (relating to Variances from Classification as a Solid Waste); 30 TAC §335.20, (relating to Variance To Be Classified as a Boiler).

§ 335.22. Additional Regulation of Certain Hazardous Waste Recyclable Activities on a Case-By-Case Basis

The commission may decide on a case-by-case basis that person accumulating or storing the recyclable materials described in §335.24(b)(4) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) should be regulated under §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials of their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. The procedures for this decision are set forth in §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities). In making this decision, the commission will consider the following factors:

(1) the types of materials accumulated or stored and the amounts accumulated or stored;

(2) the method of accumulation or storage;

(3) the length of time the materials have been accumulated or stored before being reclaimed;

(4) whether any contaminants are being released into the environment, or are likely to be so released; and

(5) other relevant factors.

Source: The provisions of this §335.22 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106.

§ 335.23. Procedures for Case-By-Case Regulation of Hazardous Waste Recycling Activities

The commission will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §335.24(b)(4) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) under the provisions of §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Re-

~~cyclable Materials), rather than under the provi~~sions governing recyclable materials utilized for precious metal recovery under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) If a generator is accumulating the waste, the commission will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management-General Provisions, and Standards Applicable to Generators of Hazardous Waste), respectively. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commission will hold a public hearing. The commission will provide notice of the hearing to the public and allow public participation at the hearing. The commission will issue a final order after the hearing stating whether or not compliance with Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management-General Provisions; and Standards Applicable to Generators of Hazardous Waste), respectively, is required. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures After Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a.

(2) If the person is accumulating the recyclable material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During the Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision). The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reason for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public comment period and in any subsequent hearing.

Source: The provisions of this §335.23 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §335.22, (relating to Additional Regulation of Certain Hazardous Waste Recyclable Activities on a Case-By-Case Basis).

§ 335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

~~(a) Hazardous wastes that are recycled are sub~~ject to the requirements for generators, transporters, and storage facilities of subsections (d)-(f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) and (i) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing ~~Before the Full Commission); and Chapter 273 of~~

~~this title (relating to Procedures after Final Decision~~):

(1) recyclable materials used in manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities);

(3) used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under the provisions governing incinerators that are adopted by reference in §335.112(a)(14) of this title (relating to Standards) and §335.152(a)(13) of this title (relating to Standards);

(4) recyclable materials from which precious metals are reclaimed;

(5) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B-I and O of this chapter, (relating to Hazardous Waste Management—General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, and Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions), respectively, or Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before an Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed ~~except that, unless provided otherwise in an international agreement as specified in the regulations~~ contained in 40 Code of Federal Regulations §262.58, which are in effect as of November 8, 1986:

(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 Code of Federal Regulations §§262.53, 262.56(a)(1)-(4) and (6) and (b), and 262.57, which are in effect as of November 8, 1986, export such materials only upon such consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in the regulations contained in 40 Code of Federal Regulations, Part 262, Subpart E, which are in effect as of November 8, 1986, and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;

(B) transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment, and must ensure that it is delivered to the facility designated by the person initiating the shipment;

(2) used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

(3) used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery;

(4) scrap metal;

(5) fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(6) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;

(7) coke and coal tar from the iron and steel industry that contains EPA hazardous waste No. K087 (decanter tank tar sludge from coking operations) hazardous waste from the iron and ~~steel production process;~~

~~(8) the following hazardous waste fuels:~~

(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 Code of Federal Regulations §266.40(e) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum-refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specifications under 40 Code of Federal Regulations §266.40(e);

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 Code of Federal Regulations §266.40(e); and

(9) petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which such wastes were generated, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 Code of Federal Regulations Part 261, Subpart C.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generator of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporter of Hazardous Waste), and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of ~~this section.~~

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from regulation.

~~(f) Owners or operators of facilities that recycle~~ recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a)-(c) of this section:

(1) notification requirements under §335.6 of this title (relating to Notification Requirements);

(2) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(g) Except as provided in subsection (h) of this section, recyclable materials (excluding those listed in subsection (c)(1) and (5)-(9) of this section), remain subject to the requirements of §§335.4, 335.6, and 335.9-335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class I Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; respectively), as applicable.

(h) Industrial solid wastes that are nonhazardous recyclable materials; and recyclable materials listed in subsections (b)(5) and (c)(2)-(4) of this section remain subject to the requirements of §335.4 of this title (relating to General Prohibitions) and §335.6 of this title (relating to Notification Requirements). Such waste may also be subject to the requirements of ~~§§335.10-335.15 of this title (relating to~~

§ 335.71. Annual Reporting

(a) Any generator or primary exporter who ships hazardous waste off site shall prepare and submit a single copy of an annual report to the executive director by January 25 of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:

(1) the Environmental Protection Agency (EPA) identification number, name, and address of the generator;

(2) the calendar year covered by the report;

(3) the EPA identification number, TWC registration number, name, and address for each off site processing, storage, or disposal facility within the United States to which waste was shipped during the year;

(4) the name and EPA identification number and TWC registration number of each transporter used during the reporting year for shipments to a processing, storage, or disposal facilities within the United States;

(5) the TWC hazardous waste code and a description, EPA hazardous waste number from 40 Code of Federal Regulations, Part 261, Subpart C or D, United States Department of Transportation (DOT) hazard class, and quantity of each hazardous waste shipped off-site for shipments to a processing, storage, or disposal facility within the United States. This information must be listed by EPA identification number of each off-site facility to which waste was shipped;

(6) a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(7) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(8) the certification signed by the generator or his or her authorized representative.

(b) Any generator who processes, stores, or disposes of hazardous waste on site must submit a report in accordance with the provisions of § 335.114 of this title (relating to Reporting Requirements) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators).

(c) Primary exporters of hazardous waste must submit an annual report in accordance with the requirements set out in the regulations contained in 40 Code of Federal Regulations, §262.56 which are in effect as of November 8, 1986.

Source: The provisions of this §335.71 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 2515.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

§ 335.73. Additional Reporting

The executive director may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 Code of Federal Regulations Part 261, Subparts C and D.

Source: The provisions of this §335.73 adopted to be effective May 28, 1986, 11 TexReg 2345.

Cross References: This Section cited in 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month).

§ 335.74. Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month

A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is exempt from the recordkeeping and reporting requirements of this subchapter, except for §335.70(a) and (c) of this title (relating to Recordkeeping); and §335.73 of this title (relating to Additional Reporting); and §335.13(a) and (g) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste and Primary Exporters of Hazardous Waste). Such generators are subject to the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators).

Source: The provision of this §335.74 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 23, 1993, 18 TexReg 8218.

§ 335.75. Notification Requirements for Interstate Shipments

In the case of interstate shipments of hazardous waste for which a manifest has not been returned within 45 days of acceptance of the waste by the initial transporter, the generator shall notify the appropriate regulatory agency of the state in which the designated facility is located and the appropri-

~~mate users of the materials, are regulated under all~~ applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

Source: The provisions of this §335.213 adopted to be effective May 28, 1986, 11 TexReg 2348.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC ~~§335.211, (relating to Applicability).~~

§ 335.214. Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements). These requirements do not apply to products which contain these recyclable materials under the provisions of §335.211(b) of this title (relating to Applicability).

~~(b) The use of waste or used oil or other material,~~ which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability) for dust suppression or road treatment is prohibited.

Source: The provisions of this §335.214 adopted to be effective May 28, 1986, 11 TexReg 2348.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC ~~§335.211, (relating to Applicability).~~

HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

§ 335.221. Applicability and Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, and September 5, 1991, issues of the Federal Register (see 56 FedReg 7239, 32688, 42504, and 43874):

(1) §266.100—Applicability, except §266.100(b);

(2) §266.102(a)—Permit Standards for Burners—Applicability, excepting those portions of §266.102(a) containing references to §§264.56(d), 264.71-264.72, 264.75-264.77, 264.90, 264.101, and 264.142(a)(2);

(3) §266.102(b)—Permit Standards for Burners—Hazardous Waste Analysis;

(4) §266.102(c)—Permit Standards for Burners—Emission Standards;

(5) §266.102(d)—Permit Standards for Burners—Permits;

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Texas Administrative Code

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1997–Part One

[Replaces 1996 Pamphlet]

Amendments effective through
January 1, 1997



Published by
West Group
St. Paul, Minn.

under authority of the Texas Secretary of State

§ 20.5. Mailing List of Persons Requesting Notice of Rulemaking

The executive director shall maintain a mailing list of persons requesting advance notice of proposed commission rules. When the commission sends notice of proposed rules to the secretary of state, the executive director shall also send notice of proposed rules by regular mail to each person on the list; however, failure to provide the notice does not invalidate any action taken or rule adopted. At the end of each state fiscal year, the executive director will notify all persons included on the list of the requirement to affirmatively express a desire to continue receiving the notices described herein, and shall eliminate those persons on the list who do not respond within 30 days of this notification.

Source: The provisions of this §20.5 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.7. Appearance

Any person may appear in person or by authorized representative at a rulemaking hearing. A representative shall disclose his authority to speak for the person represented.

Source: The provisions of this §20.7 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.9. Submission of Documents

Written documents may be submitted to the executive director no later than the time of the hearing, provided that the commission may grant additional time for submission of additional documents.

Source: The provisions of this §20.9 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.11. Oral Presentations

(a) A person desiring to make an oral presentation shall so indicate on the commission's registration form provided at the hearing.

(b) The presiding officer will establish the order of presentations at the hearing.

(c) When necessary, the presiding officer may limit:

(1) the number of times a person may speak;

(2) the time period for oral presentations; and

(3) the time period for raising questions.

(d) The presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

Source: The provisions of this §20.11 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.13. Action after Hearing Concluded

(a) After the close of the hearing and the receipt of all documents, the presiding officer shall prepare a report to the commission, which shall include:

(1) a summary of the subject of the hearing;

(2) a review and analysis of the comments submitted;

(3) any revisions recommended as the result of public comment presented;

(4) a copy of the rule as recommended for adoption; and

(5) other pertinent information.

(b) The report shall be submitted to the commission for final action.

Source: The provisions of this §20.13 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.15. Petition for Adoption of Rules

(a) Any person may petition the commission to request the adoption of a rule. Petitions shall be submitted in writing to: Executive Director, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, and shall comply with the following requirements:

(1) each rule requested must be submitted by separate petition;

(2) each petition must state the name and address of the petitioner;

(3) each petition shall include:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;

(C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(b) A petition may be denied for failure to comply with the requirements of subsection (a) of this section.

(c) Within 60 days after submission of a petition, the commission shall consider the petition and shall either deny the petition in writing, stating its

reasons for the denial, or shall initiate rulemaking proceedings in accordance with the APA.

Source: The provisions of this §20.15 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.17. Emergency Rules

If the commission finds that an imminent peril or extraordinary circumstance may threaten the public health, safety, or welfare or the integrity of the commission's regulatory programs, and requires the adoption of a rule on less than 30 day's notice, it may adopt an emergency rule without prior notice and hearing or with any abbreviated notice and hearing that it finds practicable under the circumstances. The commission shall make a written finding which shall be filed with the secretary of state setting forth its reasons for such determination. The emergency rule shall be effective immediately upon filing with the secretary of state and will continue in effect for a period of up to 120 days. The emergency rule may be renewed once before expiration for a period of 60 days.

Source: The provisions of this §20.17 adopted to be effective June 6, 1996, 21 TexReg 4719.

§ 20.19. Working Groups

Before initiating any formal rulemaking action, the commission may convene informal working groups to obtain viewpoints and advice of interested persons. The commission may also appoint working groups of experts or interested persons or representatives of the general public to advise it regarding any contemplated rulemaking. The powers of such working groups shall be advisory only.

Source: The provisions of this §20.19 adopted to be effective June 6, 1996, 21 TexReg 4719.

CHAPTER 37. FINANCIAL ASSURANCE

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Texas Administrative Code

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1997–Part One

[Replaces 1996 Pamphlet]

Amendments effective through
January 1, 1997



Published by
West Group
St. Paul, Minn.

under authority of the Texas Secretary of State

~~(3) applications for new, amended, or renewed~~ injection well permits, except ~~those~~ filed pursuant to §331.11 ~~of this~~ title (relating to Application ~~Required for Existing Wells);~~

~~(4) applications for new, amended, or modified~~ or renewed industrial solid and/or municipal hazardous waste permits filed pursuant to §335.2 of this title (relating to Permit Required) and §335.43 of this title (relating to Permit Required) or for new or amended compliance plans filed pursuant to §305.401 of this title (relating to Compliance Plan);

~~(5) applications for plan approval of reclama~~tion projects (levees, etc.);

(6) applications for creation of water districts;

(7) water district applications and petitions requiring commission approval;

(8) applications for weather modification permits and licenses;

(9) applications for new or amended certificates of convenience and necessity; and

~~(10)~~ applications for new, amended, or ~~renewed municipal solid waste permits.~~

~~Source: The~~ provisions of ~~this~~ §281.2 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective July 14, 1987; 17 TexReg 2102; amended to be effective January 7, 1993, 17 TexReg 9124; amended to be effective November 7, 1994, 19 TexReg 8542.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.1, (relating to Purpose); 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

§ 281.3. Initial Review

~~(a) Applications for permits, licenses, or other~~ types of approvals, except as provided in subsection (b) of this section, shall be reviewed by the staff for administrative completeness within 10 working days of receipt of the application by the executive director.

(b) Applications made under §335.43 of this title (relating to Permit Required) or §331.7 of this title (relating to Permit Required) shall be reviewed by the staff for administrative completeness within 15 working days after assignment of the application to a staff member for review under this section. Prior to commencement of review of an application under this section, the executive director shall notify the applicant by first-class mail of the date on ~~which the review will commence.~~

(c) For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, applicants for existing hazardous waste management facilities shall have 30 days from receipt of notice of deficiency in a Part A permit application to respond to the notification and to explain or cure the alleged deficiency in the Part A application. Applicants shall be afforded this opportunity to cure the deficiencies before the executive director may pursue enforcement action concerning deficient applications.

Source: The provisions of this §281.3 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective January 7, 1993, 17 TexReg 9124.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.18, (relating to Applications Returned); 30 TAC §305.53, (relating to Application Fee); 30 TAC §330.52, (relating to Technical Requirements of Part I of the Application); 30 TAC §335.201, (relating to Purpose, Scope, and Applicability); 30 TAC §335.202, (relating to Definitions).

~~§ 281.4. Applications for Use of State Water~~

Applications for the use of state water must include:

(1) complete application form(s), signed and notarized;

(2) the payment of fees in accordance with §§295.131-295.139 of this title (relating to Water Use Permit Fees);

(3) the verified legal status of the applicant;

(4) appropriate ownership documents (including easements and consents);

(5) an adequate map or plat;

(6) the required engineering plans or studies; and

(7) any other information as the executive director or the commission may reasonably require.

Source: The provisions of this §281.4 adopted to be effective May 28, 1986, 11 TexReg 2312.

Cross References: This Section cited in 30 TAC §261.24, (relating to Statement Filed with Executive Director); 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §295.2, (relating to Preparation of Application).

~~§ 281.5.~~ Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Hazardous Waste, and Industrial Solid Waste Management Permits

Applications for wastewater discharge, underground injection, municipal solid waste, hazardous waste, and industrial solid waste management permits must include:

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Texas Administrative Code

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1997–Part Two

[Replaces 1996 Pamphlet]

Amendments effective through
January 1, 1997



Published by
West Group
St. Paul, Minn.

under authority of the Texas Secretary of State

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305.573. Interim Status and Trial Burn Requirements.

Authority: The provisions of this Chapter 305 issued under the Texas Water Code, §5.103 and §5.105, unless otherwise noted.

Cross References: This Chapter cited in 30 TAC §295.22, (relating to Additional Requirements for the Underground Storage of Surface Water for Subsequent Retrieval and Beneficial Use); 30 TAC §310.2, (relating to Purpose and Scope); 30 TAC §310.3, (relating to Applicability); 30 TAC §310.5, (relating to Permits Required); 30 TAC §312.44, (relating to Management Practices); 30 TAC §312.122, (relating to Registrations and Permits); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.132, (relating to Applicability); 30 TAC §321.141, (relating to Additional Characteristics and Conditions for Control of Certain Activities by Rule); 30 TAC §321.187, (relating to Public Comments); 30 TAC §321.212, (relating to Purpose and Applicability); 30 TAC §321.253, (relating to Purpose and Applicability); 30 TAC §329.9, (relating to Procedures for Application); 30 TAC §331.8, (relating to Application Required for Existing Wells); 30 TAC §331.121, (relating to Class I Wells); 30 TAC §332.3, (relating to Applicability); 30 TAC §332.7, (relating to Compost Operations Located at Waste Water Treatment Facilities); 30 TAC §332.41, (relating to Definition, Requirements, and Application Processing for a Permit Facility); 30 TAC §332.45, (relating to Operational Requirements); 30 TAC §335.23, (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.69, (relating to Accumulation Time); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.201, (relating to Purpose, Scope, and Applicability); 30 TAC §335.202, (relating to Definitions); 30 TAC §335.213, (relating to Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate); 30 TAC §335.214, (relating to Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal); 30 TAC §335.222, (relating to Management Prior to Burning); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.251, (relating to Applicability and Requirements); 30 TAC §335.559, (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2); 30 TAC §335.563, (relating to Media Cleanup Requirements for Risk Reduction Standard Number 3).

Subchapter A. GENERAL PROVISIONS

§ 305.1. Scope and Applicability

(a) The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under the Texas Water Code, Chapters 26, 27, and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

~~(b) The national pollutant discharge elimination~~ system (NPDES) program, as delegated to the State of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutants discharge elimination system. The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in the Texas Water Code, §26.001.

(1) The following are point sources requiring TPDES permits for discharges:

(A) concentrated animal feeding operations as defined in Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations);

(B) concentrated aquatic animal production facilities as defined in 40 Code of Federal Regulations §122.24;

(C) discharges into aquaculture projects as set forth in 40 Code of Federal Regulations §122.25;

(D) discharges from separate storm sewers as set forth in 40 Code of Federal Regulations §122.26; and

(E) silvicultural point sources as defined in 40 Code of Federal Regulations §122.27.

(2) The TPDES permit program also applies to owners or operators of any treatment works treating domestic sewage, unless all requirements implementing the Clean Water Act (CWA), §405(d), applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of the Federal Solid Waste Disposal Act, Subtitle C, the Safe Drinking Water Act, Part C, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the regional administrator as adequate to assure compliance with the Clean Water Act, §405.

(3) The executive director may designate any ~~person subject to the standards for sewage sludge use and disposal as a "treatment works~~ treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for the sludge use and disposal developed under the Clean Water Act, §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement ~~of basis for the permit.~~

Source: The provisions of this §305.1 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §321.181, (relating to Waste and Wastewater Discharge and Air Emission Limitations).

§ 305.2. Definitions

The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Application—A formal written request for commission action relative to a permit, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

~~Bypass—The intentional diversion of a waste~~ stream from any portion of a treatment facility.

Class I sludge management facility—Any publicly owned treatment works (POTW) identified under 40 Code of Federal Regulations §403.10(a) as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

Component—Any constituent part of a unit or ~~any group of constituent parts of a unit which are~~

~~assembled to perform a specific function (e.g., a~~ pump seal, pump, kiln liner, kiln thermocouple).

Continuous discharge—A ~~discharge~~ which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns ~~for~~ maintenance, process changes, or other ~~similar activities.~~

Corrective action management unit or CAMU—An area within a facility that is designated by the commission under 40 Code of Federal Regulations, Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action). A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

~~CWA—Clean Water Act (formerly referred to as~~ the Federal Water Pollution and Control Act ~~or~~ Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 United States Code §1251 et seq.

Daily average concentration—The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) For domestic wastewater treatment plants—When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) For all other wastewater treatment plants—When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

Daily average flow—The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of ~~all instantaneous measurements taken during a 24-hour period or during the period of daily dis~~charge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

Direct discharge—The discharge of a pollutant.

Discharge monitoring report (DMR)—The EPA uniform national form, including any subsequent additions, revisions, or modifications for the ~~reporting of self-monitoring results by permittees.~~

Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

Disposal facility—A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

~~Effluent limitation—Any restriction imposed on~~ quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

Environmental Protection Agency (EPA)—The United States Environmental Protection Agency.

Facility—Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units;

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action).

Facility mailing list—The mailing list for a facility seeking a Class I injection well UIC permit. The ~~facility mailing list, which is described in 40 Cod~~

of Federal Regulations §120.10(e)(viii), is maintained by the Texas Natural Resource Conservation Commission in accordance with §305.103(b) of this title (relating to Notice by Mail).

Functionally equivalent component—A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

Indirect discharger—A nondomestic discharger introducing pollutants to a POTW.

Injection well permit—A permit issued pursuant to Texas Water Code, Chapter 27.

Land disposal facility—Includes landfills, waste piles, surface impoundments, land farms, and injection wells.

National pollutant discharge elimination system (NPDES)—The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405. The term includes an approved program.

New discharger—

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective NPDES permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

New source—Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under CWA, §306; or

(B) after proposal of standards of performance in accordance with CWA, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

Operator—The person responsible for the overall operation of a facility.

Outfall—The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to the water in this state.

Owner—The person who owns a facility or part of a facility.

Permit—A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, and an injection well permit.

Person—An individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, partnership, or any other legal entity or association.

Primary industry category—Any industry category listed in 40 Code of Federal Regulations, Part 122, Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

Process wastewater—Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Processing—The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage, or volume reduction. The meaning of transfer as used here, does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline, or other means.

Publicly owned treatment works (POTW)—Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if

~~they convey wastewater to a POTW providing treatment.~~

Radioactive material—A material which is identified as a radioactive material under Texas Civil Statutes, Article 4590f, as amended, and the rules adopted by the Texas Board of Health pursuant thereto.

~~Recommencing discharger—A source which re~~commences discharge after terminating operations.

Regional administrator—Except when used in conjunction with the words "state director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Natural Resource Conservation Commission, or to the Texas Natural Resource Conservation Commission, consistent with the organization of the agency as set forth in the Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state director" in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 Code of Federal Regulations, Part 122, is available for inspection at the library of the Texas Natural Resource Conservation Commission, located in Room B-20 of the Stephen F. Austin State Office Building, ~~1700 North Congress Avenue, Austin.~~

Remediation waste—All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

~~Schedule of compliance—A schedule of remedial~~ measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with CWA and regulations.

Severe property damage—Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge.

Sewage sludge—The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment ~~works.~~

Site—The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Solid waste permit—A permit issued pursuant to Texas Civil Statutes, Article 4477-7, as amended.

Storage—The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere. Wastewater discharge permit—A permit issued pursuant to the Texas Water Code, Chapter 26.

~~Texas pollutant discharge elimination system~~ (TPDES)—The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405, the Texas Water Code, and Texas Administrative Code regulations.

Toxic pollutant—Any pollutant listed as toxic under the CWA, §307(a), or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing CWA, §405(d).

Treatment works treating domestic sewage—A POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

Variance—Any mechanism or provision under CWA, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System) ~~which allows modification to or waiver of the gen-~~

~~erally applicable effluent limitation requirements~~ or time deadlines of CWA or this title.

Wetlands—Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and ~~constitute water in the state.~~

Source: The provisions of this §305.2 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 22, 1994, 19 TexReg 941.

Cross References: This Section cited in 30 TAC §305.1, (relating to Scope and Applicability); 30 TAC §305.534, (relating to New Sources and New Dischargers).

~~§ 305.3. Abbreviations~~

The following abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

CFR—Code of Federal Regulations.

CWA—Clean Water Act.

DMR—Discharge monitoring report.

EPA—United States Environmental Protection Agency.

NPDES—National pollutant discharge elimination system.

POTW—Publicly owned treatment works.

TPDES—Texas pollutant discharge elimination system.

Source: The provisions of this §305.3 adopted to be effective ~~October 8, 1990, 15 TexReg 5492.~~

Subchapter B. EMERGENCY ORDERS, TEMPORARY ORDERS, AND EXECUTIVE DIRECTOR AUTHORIZATIONS

Cross References: This Subchapter cited in 30 TAC §335.446, (relating to Emergency Placement of Warning Signs).

~~§ 305.21. Emergency Orders and Temporary~~ Orders Authorized

The commission may issue emergency orders or temporary orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, where the discharge is regulated by a Texas pollutant discharge elimination system (TPDES) permit or where a TPDES permit is not required, ~~when necessary to enable action to be taken more expeditiously than is otherwise provided by the~~ Texas Water Code, Chapter 26, to effectuate the policy and purposes of this chapter.

Source: The provisions of this §305.21 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.535, (relating to Bypasses from TPDES Permitted Facilities); 30 TAC §321.80, (relating to Associated Facilities).

§ 305.22. Application for Orders or Authorizations To Discharge

(a) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, into or adjacent to water in the state shall submit a sworn application to the commission containing the following information and any other information the commission may reasonably require:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss (other than economic loss caused by delays in production), or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, for unreasonable economic loss to persons other than the applicant;

(2) a statement that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(3) an estimate of the dates on which the proposed discharge will begin and end;

(4) a statement of the volume and quality of the proposed discharge;

(5) an explanation of measures proposed to minimize the volume and duration of the discharge;

(6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use;

(7) for temporary orders, a list of potentially affected persons in accordance with §305.48(1) of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits); and

~~(8) payment of appropriate application fees in~~ accordance with §305.27 of this title (relating to Application Fees).

(b) If the applicant is other than an individual, the application must be sworn to by someone authorized to do so for the applicant, as provided for in §305.44 of this title (relating to Signatories to Applications).

(c) If the executive director issues an authorization to discharge as provided in §305.25 of this title (relating to Executive Director Authorizations To Discharge), the applicant must submit the sworn application as required in subsection (a) of this section before the date of the commission's public hearing to consider the authorization.

(d) This section does not apply to unpermitted facilities subject to Texas pollutant discharge elimination system regulations.

Source: The provisions of this §305.22 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.26, (relating to Hearings for Temporary Orders, Executive Director Authorizations, and Emergency Orders); 30 TAC §305.27, (relating to Application Fees).

§ 305.23. Emergency Orders

(a) The commission may issue emergency orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, where the discharge is regulated by a Texas pollutant discharge elimination system (TPDES) permit or where a TPDES permit is not required, without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, only if the commission finds the following to be true:

(1) that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss (other than economic loss caused by delays in production), or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) that the proposed discharge will not present a significant hazard to the uses that may be ~~made of the receiving water after the discharge;~~

~~(3) that the estimate of the dates on which the~~ proposed discharge will begin and end and the estimate of the volume and quality of the proposed discharge submitted by the applicant are reasonable and are attainable; and

(4) that the measures proposed by the applicant to minimize the volume and duration of the discharge, and to maximize the waste treatment efficiency of treatment units not taken out of service or treatment facilities to be provided for interim use are reasonable.

(b) If the commission issues an emergency order under the authority of subsection (a) of this section without a hearing, the order shall fix a time and place for a hearing to be held before the commission which shall be held as soon after the emergency order is issued as is practicable and after such notice as is required under §305.24(a) of this title (relating to Notice).

(c) This section does not apply to discharges of hazardous waste or unpermitted facilities subject to TPDES regulation.

Source: The provisions of this §305.23 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 1202; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §279.3, (relating to Definitions); 30 TAC §305.26, (relating to Executive Director Authorizations to Discharge); 30 TAC §305.27, (relating to Application Fees); 30 TAC §305.535, (relating to Bypasses from TPDES Permitted Facilities); 30 TAC §321.134, (relating to Discharge of Water Contaminated by Other Petroleum Substances).

§ 305.24. Notice

(a) Emergency orders relating to the discharge of waste or pollutants may be issued by the commission without prior notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.

(b) Temporary orders require a hearing before issuance of the order. The commission shall give notice of not less than 20 days before the date set for the hearing on the temporary order to all affected persons, and to all persons as may be required by law.

(c) The requirements of the Texas Water Code, §26.022, concerning the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held for an emergency order, but such general notice of the hearing shall be given as the commission considers practicable under the circumstances.

(d) This section does not apply to discharges of ~~hazardous waste.~~

Source: The provisions of this §305.24 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102.

Cross References: This Section cited in 30 TAC §305.23, (relating to Emergency Orders).

§ 305.25. Executive Director Authorizations to Discharge

If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility into or adjacent to water in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility, that there are no feasible alternatives to the discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant. If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in §305.23(b) of this title (relating to Emergency Orders) as soon as practicable, but in no event later than 10 days after issuance of the authorization, to affirm, modify, or set aside the authorization. This section does not enable the executive director to authorize the discharge of hazardous waste.

Source: The provisions of this §305.25 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102.

Cross References: This Section cited in 30 TAC §305.22, (relating to Application for Orders or Authorizations To Discharge); 30 TAC §305.26, (relating to Hearings for Temporary Orders, Executive Director Authorizations, and Emergency Orders).

§ 305.26. Hearings for Temporary Orders, Executive Director Authorizations, and Emergency Orders

(a) At the hearing for an executive director authorization or commission emergency order, the commission shall affirm, modify, or set aside the authorization or emergency order. For any hearing on a temporary order, executive director authorization, or emergency order, the following procedures will apply.

(1) Parties will be designated by the commission. To be designated as a party, the person seeking party status must show a justiciable interest. For each hearing under this section, the applicant, the public interest advocate of the commission, and the executive director of the commission are designated as parties by rule.

(2) The testimony of all witnesses will be under oath, with an opportunity for questioning by the commission and cross-examination by the other parties.

(3) Other parties to the hearing will be given an opportunity to present rebuttal evidence and testimony.

(4) The applicant will have the burden of proving its need for an authorization or emergency order, and will have the right to open and close the evidentiary parts of the hearing; the fact that the executive director has authorized such discharge under §305.25 of this title (relating to Executive Director Authorizations to Discharge), standing alone, will not constitute evidence of the need for such authorization.

(5) The commission will have the right to limit the number of witnesses; to limit the time for direct questioning or cross-examination of a witness; to refuse illustrative and documentary evidence; and to limit argument.

(b) Before the date set for hearing by the commission to affirm, modify, or set aside an executive director authorization, the applicant shall submit a sworn application supporting such authorization, as specified under §305.22(a) of this title (relating to Application for Orders on Authorizations to Discharge).

Source: The provisions of this §305.26 adopted to be effective June 19, 1986, 11 TexReg 2591.

§ 305.27. Application Fees

(a) The application fee for an emergency order to discharge under §305.23 of this title (relating to Emergency Orders) or for a solid waste activity under §305.29 of this title (relating to Emergency Orders for Solid Waste Activities) or §305.30 of this title (relating to Emergency Actions Concerning Hazardous Waste), or a temporary order under §305.22 of this title (relating to Application for Orders or Authorizations to Discharge) is $100 plus $50 to cover the cost of required notice. The fee is payable at the time the application is filed.

(b) The application fee for an executive director authorization is $100 plus $50 to cover the cost of required notice. The fee is payable, along with the sworn application required by §305.22 of this title (relating to Application for Orders or Authoriza-

tions to Discharge), before the date of the commission's public hearing to consider the authorization.

Source: The provisions of this §305.27 adopted to be effective June 19, 1986, 11 TexReg 2591.

Cross References: This Section cited in 30 TAC §305.22, (relating to Application for Orders or Authorizations To Discharge).

§ 305.28. Renewals of Emergency Orders and Temporary Orders

The duration of any discharge emergency order or temporary order issued pursuant to this chapter shall not exceed 180 days, but the orders may be renewed one time upon proper application. Applications for renewal may be filed with the commission, along with payment of the application fee. Renewal applications will be treated as new applications and the temporary order application procedures of this chapter will be followed.

Source: The provisions of this §305.28 adopted to be effective June 19, 1986, 11 TexReg 2591.

§ 305.29. Emergency Orders for Solid Waste Activities

(a) The commission may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of solid waste management within its jurisdiction, whether such activity is covered by a permit or not, if the commission determines that an emergency exists requiring immediate action to protect the public health and safety or the environment. The order may be issued without notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.

(b) If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing to be held by the commission in accordance with commission rules, so as to affirm, modify, or set aside the emergency order.

(c) The requirements of the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4), relating to public notice, do not apply to a hearing to affirm, modify, or set aside an emergency order issued under this section, but such general notice of the hearing shall be given in accordance with commission rules.

(d) Any emergency order issued under this section shall not exceed 90 days in duration, but may be renewed.

Source: The provisions of this §305.29 adopted to be effective June 19, 1986, 11 TexReg 2591.

Cross References: This Section cited in 30 TAC §305.27, (relating to Application Fees).

§ 305.30. Emergency Actions Concerning Hazardous Waste

(a) Whenever there is good reason to believe that the storage, processing, or disposal of hazardous waste should be authorized in order to alleviate an imminent and substantial endangerment to human health or safety or the environment and if there are no alternative, permitted facilities that are reasonably available for the proper management of the waste, the commission, on its own motion or the request of the executive director or any other party, may issue an emergency order authorizing the processing, storage, or disposal of the hazardous waste at a nonpermitted facility or at a permitted facility with no authorization under its permit to receive the hazardous waste in need of immediate management.

(b) A party, other than the executive director, requesting an emergency order approving the storage, processing, or disposal of hazardous waste, shall file a written request with the executive director setting forth the reason for the request, including a description of the imminent and substantial endangerment to human health or safety or the environment, and alternatives investigated.

(c) The executive director shall review the request and may require the applicant for an emergency order to supply additional information as may be reasonably required to assist the commission in making the necessary findings set out in subsection (a) of this section.

(d) The executive director shall forward the request for an emergency order and the executive director's recommendation, including any proposed emergency order and findings to the commission.

(e) Any emergency order issued by commission under this section:

(1) shall not exceed 90 days in duration;

(2) shall clearly specify the hazardous wastes to be received, and the manner and location of their processing, storage, or disposal;

(3) may be terminated by the commission at any time without notice and hearing if it determines that termination is appropriate to protect human health or the environment; and

(4) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

~~(f) Public notice shall accompany the emergency~~ order. The notice shall allow at least 45 days for public comment and shall be given at least 30 days before the hearing on the emergency order. Public notice of the emergency order may be given at the same time as public notice and opportunity for comment on the emergency order, and the two notices may be combined. If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing to be held by the commission in accordance with the commission rules, so as to affirm, modify, or set aside the emergency order. The notice shall include:

(1) the name and address of the applicant;

(2) the name and location of the hazardous waste management facility;

(3) a brief description of the wastes involved;

(4) a brief description of the action authorized or to be authorized, and the reasons for authorization;

(5) the duration of the emergency order; and

(6) the name and address of the commission (the office granting the emergency order).

Source: The provisions of this §305.30 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102.

Cross References: This Section cited in 30 TAC §305.27, (relating to Application Fees).

SUBCHAPTER C. APPLICATION FOR PERMIT

§ 305.41. Applicability

The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under the Texas Water Code, Chapters 26, 27, and 28, the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

Source: The provisions of this §305.41 adopted to be effective June 19, 1986, 11 TexReg 2593.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit).

§ 305.42. Application Required

(a) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and the Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361, §361.082(e), shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §6901 et seq., that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 Code of Federal Regulations §270.73 and certify that such a facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

Source: The provisions of this §305.42 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective August 30, 1988, 13 TexReg 4071; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit).

§ 305.43. Who Applies

~~(a) It is the duty of the owner of a facility to~~ submit an application for a permit; however, if the facility is owned by one person and operated by another and the executive director determines that special circumstances exist where the operator or the operator and the owner should both apply for a permit, and for all Texas pollutant discharge elimination system (TPDES) permits, it is the duty of the operator and the owner to submit an application ~~for a permit.~~

(b) For solid waste and hazardous waste permit applications, it is the duty of the owner of a facility

to submit an application for a permit, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit.

Source: The provisions of this §305.43 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.184, (relating to Application Requirements).

§ 305.44. Signatories to Applications

(a) All applications shall be signed as follows.

(1) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this paragraph, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(2) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency, the application shall be signed by either a principal executive officer or a ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrator of the United States Environmental Protection Agency).

(b) A person signing an application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) For hazardous solid waste permit applications, the owner and operator of a facility must sign the application.

Source: The provisions of this §305.44 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.22, (relating to Application for Orders or Authorizations To Discharge); 30 TAC §305.50, (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.70, (relating to Municipal Solid Waste Class I Modifications); 30 TAC §305.128, (relating to Signatories to Reports); 30 TAC §305.172, (relating to Determining Feasibility of Compliance and Adequate Operating Conditions); 30 TAC §305.183, (relating to Certification); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §305.572, (relating to Permit and Trial Burn Requirements); 30 TAC §312.10, (relating to Permit and Registration Applications Processing); 30 TAC §312.11, (relating to Permits); 30 TAC §312.142, (relating to Transporter Registration); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.184, (relating to Application Requirements); 30 TAC §321.192, (relating to Pollution Prevention Plans); 30 TAC §321.195, (relating to Monitoring and Reporting Requirements); 30 TAC §330.52, (relating to Technical Requirements of Part I of the Application); 30 TAC §330.65, (relating to Registration for Solid Waste Management Facilities); 30 TAC §332.34, (relating to Registration Application).

§ 305.45. Contents of Application for Permit

(a) Forms for permit applications will be made available by the executive director. Each application for permit shall include the following:

(1) the name, mailing address, and location of the facility for which the application is submitted;

(2) the ownership status as federal, state, private, public, or other entity;

(3) the applicant's name, mailing address, and telephone number;

(4) a brief description of the nature of the business;

(5) the activities conducted by the applicant which require a permit;

(6) a topographic map, ownership map, county highway map, or a map prepared by a registered

professional engineer or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-½ inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the map area;

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped, and so forth;

(C) the location of any waste disposal activities conducted on the tract not included in the application;

(D) the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity;

(E) such other information that reasonably may be requested by the executive director;

(7) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management Program under the Texas Solid Waste Disposal Act;

(B) Underground Injection Control (UIC) Program under the Texas Injection Well Act;

(C) National Pollutant Discharge Elimination System (NPDES) Program under the Federal Clean Water Act (CWA) and Waste Discharge Program under the Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration (PSD) Program under the Federal Clean Air Act;

(E) Nonattainment Program under the Federal Clean Air Act;

(F) national emission standards for hazardous pollutants (NESHAPS) preconstruction approval under the Clear Air Act;

(G) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) dredge or fill permits under of the Federal Clean Water Act;

(I) other environmental permits;

(8) Supplementary technical report. A supplementary technical report shall be submitted in connection with an application. The report shall be prepared either by a Texas registered professional engineer, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report shall include the following:

(A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;

(B) for each outfall, injection well, place of deposit, or place of disposal:

(i) the volume and rate of disposal of the defined waste or of fluid injection, including appropriate averages, the maximum rates of disposal or injection over representative periods of time, and detailed information regarding patterns of disposal or injection; and

(ii) the physical and chemical properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radioactive properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved;

(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit), §305.48 of this title (relating to Additional Contents of Applications for Waste Discharge Permits), and Chapter 330, Subchapter E of this title (relat-

ing to Municipal Solid Waste Permit Procedures).

(b) Only one application needs to be filed for each geographical location in which waste is or will be disposed of or discharged from, even though there may be more than one outfall, place of deposit, or other place of disposal covered in the application.

Source: The provisions of this §305.45 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective June 13, 1996, 21 TexReg 4999.

Cross References: This Section cited in 30 TAC §305.46, (relating to Designation of Material as Confidential); 30 TAC §305.48, (relating to Additional Contents for Applications for Wastewater Discharge Permits); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §330.51, (relating to Permit Application for Municipal Solid Waste Facilities); 30 TAC §330.52, (relating to Technical Requirements of Part I of the Application); 30 TAC §330.60, (relating to Technical Requirements of an Application for Registration of Solid Waste Facilities (Type V and Type VI)).

§ 305.46. Designation of Material as Confidential

(a) Certain material submitted to the commission may be determined to be confidential and withheld from public review. The applicant shall identify any material for which confidentiality is requested.

(b) Each claim of confidentiality must be made upon submission of the material with the application, or the material will be considered available for public review.

(c) Reasons of confidentiality include the protection of trade secrets and similar interests which give a person the right to preserve confidentiality of commercial information in order to obtain or retain advantages from any proprietary right in the information. This includes authorizations under 5 United States Code §552(b)(4), 18 United States Code §1905, and special rules cited in 40 Code of Federal Regulations §§2.301-2.309.

(d) The executive director will review each claim of confidentiality. If a claim is not approved, the applicant will be notified and informed whether the material is essential to the application. The applicant may elect to withdraw any material submitted with an application. If the applicant elects to withdraw certain material which the executive director has determined is not confidential, such material will be withheld from public review until withdrawn. Any information withdrawn by or returned to the applicant under this provision shall not be considered by the commission in its decision to grant or deny the application, or by the executive director in preparing a draft permit.

(e) The name and address of an applicant or permittee will not be considered confidential.

(f) For injection well applications, information which deals with the existence, absence, or levels of contaminants in drinking water will not be considered confidential.

(g) This section shall not be construed so as to make confidential any effluent data, including effluent data in permits, draft permits, and permit applications; nor shall this section be construed so as to preclude necessary discovery of relevant information by any party to a contested hearing before the commission.

(h) For Texas pollutant discharge elimination system (TPDES) applications, information required by §305.45 of this title (relating to Contents of Application for Permit) will not be considered confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

Source: The provisions of this §305.46 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §312.11, (relating to Permits); 30 TAC §321.184, (relating to Application Requirements).

§ 305.47. Retention of Application Data

A permittee shall keep records, throughout the term of the permit, of data used to complete the final application and any supplemental information.

Source: The provisions of this §305.47 adopted to be effective June 19, 1986, 11 TexReg 2593.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits); 30 TAC §321.184, (relating to Application Requirements).

§ 305.48. Additional Contents for Applications for Wastewater Discharge Permits

(a) The following shall be included in an application for a wastewater discharge permit.

(1) The original and one copy of the permit application shall be submitted on forms provided by or approved by the executive director, and

~~shall be accompanied by a like number of copies~~ of all technical supplements and attachments.

(2) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information.

(3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes, including, but not limited to, the following:

(A) the operator's name, address, and telephone number;

(B) whether the facility is located on Indian lands;

(C) up to four standard industrial codes (SIC) which best reflect the principal products or services provided by the facility.

(b) The following regulations contained in 40 Code of Federal Regulations, Part 122, which are in effect as of the date of TPDES program authorization, as amended, are adopted by reference.

(1) Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(g), providing application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

(2) Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(h), providing application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only nonprocess wastewater, except 40 Code of Federal Regulations §122.21(h)(4)(iii), the requirements of which are addressed in §305.126(e) of this title (relating to Additional Standards Permit Conditions for Waste Discharge Permits).

(3) Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(i), providing application requirements for new and existing concentrated animal feeding operations ~~and aquatic animal production facilities.~~

~~(c) In addition to the information required by~~ §305.45 of this title (relating to Content of Application for Permit), an application by an individual for a waste discharge permit shall contain:

(1) the individual's full legal name and date of birth;

(2) the street address of the individual's place of residence;

(3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;

(4) the individual's sex; and

(5) any assumed business or professional name of the individual filed under Business and Commerce Code, Chapter 36.

Source: The provisions of this §305.48 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective January 7, 1994, 18 TexReg 9936.

Cross References: This Section cited in 30 TAC §305.22, (relating to Application for Orders or Authorizations To Discharge); 30 TAC §305.45, (relating to Contents of Application for Permit); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.536, (relating to Requirements for Applications and Permits with Sludge Related Conditions).

§ 305.49. Additional Contents of Application for an Injection Well Permit

(a) The following shall be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.122 of this title (relating to Class III Wells);

(3) the manner in which compliance with the financial responsibility requirement of §305.153 of this title (relating to Financial Responsibility) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Plugging and Abandonment Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) ~~will be attained;~~

~~(6) the manner in which compliance with the~~ post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(9) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in the Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

(1) mine plan;

(2) a restoration table;

(3) a baseline water quality table;

(4) control parameter upper limits;

(5) monitor well locations; and

(6) other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(4)(B) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

Source: The provisions of this §305.49 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective January 5, 1988, 12 TexReg 4860; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective November 7, 1991, 16 TexReg 6051.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste ~~Permit Modification at the Request of the Permittee~~).

§ 305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit

Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

(1) One original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes. ~~Also to be submitted are listings of evidence of noncompliances~~ concerning solid waste management by the permit holder in the preceding five years at the permitted site, listings of evidence of noncompliances concerning solid waste management in the preceding five years at any site owned, operated, or controlled by the applicant in the State of Texas, a summary of the attempts of the permit holder to correct the environmental violations, and an indication of whether the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by the Texas Solid Waste Disposal Act or by any rule of the commission. For purposes of this subsection, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).

~~(4) An application for a permit, permit amend~~ment, or permit modification to store, process, or dispose of hazardous waste ~~shall~~ be subject to the following requirements, as applicable.

(A) In the ~~case~~ of an application for a permit to ~~store, process,~~ or dispose of hazardous ~~waste, the application shall also contain any~~

~~additional information required by 40 Code of~~ Federal Regulations (CFR) §§270.13-270.26, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), (4), (b), and (c), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Financial information submitted to satisfy this subparagraph shall meet the requirements of subparagraphs (C) or (D) of this paragraph.

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure care, and liability coverage in accordance with Title 40, Code of Federal Regulations, Part 264, Subpart H, as adopted by reference under §335.152(a)(6) of this title (relating to Standards);

(ii) a certified copy of the resolution; and

(iii) certification by the governing body of passage of the resolution.

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph shall include the applicable items listed under clauses (i)-(vii) of this subparagraph. ~~Financial statements required under clauses (ii) and (iii) of this subparagraph shall~~ be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure care, and liability coverage in accordance with Title 40, Code of Federal Regulations, Part 264, Subpart H, as adopted by reference under §335.152(a)(6) of this title (relating to Standards);

(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:

(I) audited financial statements for the previous two years; and

(II) the most current quarterly financial statement prepared according to generally accepted accounting principles;

(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:

(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service";

(II) financial statements for the previous two years; and

(III) additionally, an audited financial statement for the most recent fiscal year;

(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;

(v) for privately held companies, written disclosure of the information that would normally be found in Securities and Exchange

~~Commission Form 10-K including, but not~~ limited to, the following:

(I) descriptions of the business and its operations;

(II) identification of any affiliated relationships;

(III) credit agreements and terms;

(IV) any legal proceedings involving the applicant;

(V) contingent liabilities; and

(VI) significant accounting policies;

(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;

(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i)-(v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

(II) written detail of the annual operating costs of the facility and a projected ~~cash flow statement including the period of construction and first two years of operation~~. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.

(E) If any of the information required to be disclosed under subparagraph (D) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(F) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency, that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14-270.26. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility ~~must be submitted at least 180 days before~~

~~physical construction of the facility is expected to commence.~~

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment which is filed after January 1, 1986, which is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a registered professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such a release.

~~(9) In the case of an application for a permit to~~ store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a ~~solid waste management facility permit to provide for capacity expansion, the application shall~~ also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application shall also contain the following:

(A) copies of any relevant land use plans, adopted pursuant to the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) identification of the names and locations of industrial and other waste-generating facilities within ½ mile of the facility in the case of an application for a permit for a new on-site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(F) of this section.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or ~~commercial hazardous~~

~~waste land disposal unit is subject to such an~~ inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles travelling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles travelling to and from the facility within a minimum radius of 2 ½ miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 ½ mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways. Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, ~~the following:~~

~~(I) in addition to the contingency plan~~ required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Natural Resource Conservation Commission, Texas Parks and Wildlife, General Land Office, Texas Department of Health, and Texas Railroad Commission);

(X) a showing of coordination with the local emergency planning committee and any local comprehensive emergency management plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

~~(II) costs involved in supplying any of~~ the information included in or satisfying any of the requirements of clause (i)(I)-(XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities pursuant to §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or other appropriate entity such as professional organizations regularly doing business in the area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraphs (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that ~~lack of experience.~~

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in Title 40, CFR §266.11) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) and (1)(B)(iii) of this title (relating to Conditions To Be Determined for Individual Permits).

Source: The provisions of this §305.50 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective January 5, 1988, 12 TexReg 4861; amended to be effective August 4, 1989, 14 TexReg 3531; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 7, 1991, 16 TexReg 6051; amended to be effective July 29, 1992, 17 TexReg 5016; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective May 11, 1994, 19 TexReg 3250; amended to be effective November 20, 1996, 21 TexReg 10982.

Cross References: This Section cited in 30 TAC §281.26, (relating to Applications for New Commercial Hazardous Waste Management Facility Permits); 30 TAC §305.45, (relating to Contents of Application for Permit); 30 TAC §305.49, (relating to Additional Contents of Application for an Injection Well Permit); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.66, (relating to Permit Denial, Suspension, and Revocation); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.183, (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities).

§ 305.51. Revision of Applications for Hazardous Waste Permits

(a) Owners or operators of hazardous waste management facilities, who qualify for interim status pursuant to 40 Code of Federal Regulations (CFR), Part 270, Subpart G, who have continuing authority to store, process, and/or dispose of hazardous waste pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and who filed a Part A permit application pursuant to 40 CFR §270.10 shall file a revised Part A application with the executive director for any of the following changes during interim status:

(1) new hazardous wastes not identified in the original application are stored, processed, or disposed of at the facility;

(2) increases in the design capacity of processes used at the facility occur;

(3) changes in the processes for management of the waste occur or additional processes are added;

(4) changes in the ownership or operational control of a facility are made; or

(5) newly regulated units for the storage, processing, or disposal of hazardous waste are added.

(b) The purpose of this section is to delineate requirements for filing a revised application, not to authorize any changes in facility operation. Changes in facility operations will be reviewed and approved by the executive director. In deciding whether to approve the proposed change, the executive director may consider the requirements set forth in 40 CFR §270.72. For changes in the ownership or operational control of a facility, the new owner or operator shall submit a revised Part A permit application no later than 90 days prior to the scheduled change and shall also comply with the requirements set forth in 40 CFR §270.72(d). A permit will be required for the operation of an above-grade landfill not described in a Part A application filed pursuant to §335.43 of this title (relating to Permit Required) prior to the effective date of this section.

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) changes made solely for the purposes of complying with the requirements of 40 CFR §265.193 for tanks and ancillary equipment;

(2) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of the Resource Conservation and Recovery Act (RCRA), §3004(*o*), as amended;

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been stored, processed, or disposed of at the facility prior to the effective date of the United States Environmental Protection Agency (EPA) regulation establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the EPA under the RCRA, §3008(h), as amended, or other federal authority, by an authorized state under comparable state authority, or by a court in a judicial proceeding brought by the EPA or an authorized state, provided that such changes are limited to the storage, processing, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to store or process, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by 40 Code of Federal Regulations, Part 268 or by §3004 of the RCRA, provided that such changes are made solely for the purpose of complying with 40 Code of Federal Regulations, Part 268 or §3004 of the RCRA, as amended; and

(7) addition of newly regulated units under subsection (a)(5) of this section.

Source: The provisions of this §305.51 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective July 29, 1992, 17 TexReg 5016; amended to be effective February 26, 1996, 21 TexReg 1137.

Cross References: This Section cited in 30 TAC §120.3, (relating to Applicability); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.201, (relating to Purpose, Scope, and Applicability); 30 TAC §335.202, (relating to Definitions); 30 TAC §335.362, (relating to Applicability).

~~§ 305.52. Waste Containing Radioactive Materials~~

An application which involves the disposal of a waste containing radioactive materials shall be accompanied by a letter or other instrument in writing from the Texas Department of Health, stating either that the applicant, or the person delivering the waste containing radioactive materials for disposal by the applicant, has a license from the Texas Department of Health governing the disposal of radioactive materials, or that the applicant or the person served by the applicant does not need such a license.

Source: The provisions of this §305.52 adopted to be effective June 19, 1986, 11 TexReg 2593.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

~~§ 305.53. Application Fee~~

(a) Except as specifically provided hereunder, an applicant shall include with each application a fee of $100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is $25. The fee for each disposal well which will be authorized to receive hazardous waste is $2,000.

(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than $2,000 and not more than $50,000 as calculated in accordance with the following:

(A) site evaluation—$100 per acre of solid waste facility up to 300 acres, no additional fee thereafter;

(B) process analysis—$1,000;

(C) facility unit(s) analysis—$500 per unit;

(D) management/facility analysis—$500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the $500 per unit fee; except that multiple storage tanks or container storage areas identical in type and use will be subject to a single $500 unit fee.

(4) The permit application fee for water use permits shall be submitted in accordance with §§295.131-295.140 of this title (relating to Water Use Permit Fees).

(5) The permit application fee for mine shaft permits shall be submitted in accordance with §329.9 of this title (relating to Procedures for Applications).

(6) The permit application fees for wastewater disposal permits shall not be less than $100 and not more than $2,000 as follows.

(A) Agricultural permit applications fees are as follows:

(i) minor amendments—$100; and

(ii) new, amendment, and renewal applications—$300.

(B) Domestic wastewater permit application fees are based upon the following flow categories:

~~(i) minor amendments—$100;~~

~~(ii) new, amendment, and renewal applications less than 50,000 gallons per day—$300;~~

(iii) new, amendment, and renewal applications 50,000 to less than 100,000 gallons per day—$500;

(iv) new, amendment, and renewal applications 100,000 to less than 250,000 gallons per day—$800;

(v) new, amendment, and renewal applications 250,000 to less than 500,000 gallons per day—$1,200;

(vi) new, amendment, and renewal applications 500,000 to less than 1 million gallons per day—$1,600; and

(vii) new, amendment, and renewal applications 1 million and greater gallons per day—$2,000.

(C) Municipal stormwater permit application fees as follows:

(i) minor amendments—$100; and

(ii) new, major amendments, and renewal applications—$2,000.

(D) Industrial wastewater permit application fees are based upon the EPA major/minor designation and the commission assigned toxicity rating as follows:

(i) minor amendments for minor facilities—$100;

(ii) minor amendments for major facilities—$400;

(iii) new, amendment, and renewal applications for minor facilities that are not subject to categorical standards promulgated by EPA (40 Code of Federal Regulations, Part 400)—$300;

(iv) new, amendment, and renewal applications for minor facilities that must comply with a categorical standard promulgated by the EPA (40 Code of Federal Regulations, Part 400)—$1,200; and

(v) new, amendment, and renewal applications for major facilities—$2,000.

(7) The fees established by this section are due at the time that the application is filed in accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas

~~Natural Resource Conservation Commission for~~ purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees pursuant to paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application for a new, amended, or modified permit a fee of $50 to be applied toward the cost of providing required notice. A fee of $15 is required with each application for renewal.

Source: The provisions of this §305.53 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective March 10, 1994, 19 TexReg 1376.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.64, (relating to Transfer of Permits); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.184, (relating to Application Requirements); 30 TAC §335.321, (relating to ~~Purpose~~).

SUBCHAPTER D. AMENDMENTS, MODIFICATIONS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

Cross References: This Subchapter cited in 30 TAC §305.572, (relating to Permit and Trial Burn Requirements); 30 TAC §331.68, (relating to Post-Closure Care).

§ 305.61. Applicability

The provisions of this subchapter set forth the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of permits.

Source: The provisions of this §305.61 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to Application Requirements).

§ 305.62. Amendment

(a) Causes for amendment. Except as provided in ~~§305.70 of this title (relating to Municipal Solid Waste Class I Modifications)~~, §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), and in §305.66 of this title (relating to Corrections of Permits), a change in a term, condition, or provision of a permit requires an amendment. The permittee or an affected person may request an amendment to a permit. If the permittee requests an amendment, the application shall be processed in accordance with Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a hazardous or industrial solid waste permit, the application shall be processed in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). ~~If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title (relating to Municipal Solid Waste Class I Modifications)~~. If an affected person requests an amendment, such request shall be submitted to the executive director for review. If the executive director determines such a request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting such amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that such a request is justified, the amendment will be processed in accordance with subsections (d) and (f) of this section.

(b) Application for amendment. An application for an amendment to a permit shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in §§305.41-305.53 of this title (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection, except a minor amendment to a Texas pollutant discharge elimination system (TPDES) permit which is defined in subparagraph (C) of this paragraph. A minor amendment includes any other change to a permit issued under this chapter that will not cause a potential deterioration of quality of water in the state nor relax a standard or criterion which

may result in a potential deterioration of quality of water in the state. A minor amendment also includes, but is not limited to, the following:

(A) changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(B) requiring more frequent monitoring or reporting by the permittee; and

(C) for TPDES permits, only the following changes constitute minor amendments:

(i) correct typographical errors;

(ii) require more frequent monitoring or reporting by the permittee;

(iii) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(iv) change a new source construction schedule or delete a point source outfall as follows:

(I) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under 40 Code of Federal Regulations (CFR) §122.19; does not exist

(II) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

(v) when the permit becomes final and effective on or after March 9, 1982, conform to changes respecting to 40 CFR §122.41(e), (*l*), (m)(4)(i)(B), and §122.42(a) issued September 26, 1984; or

(vi) incorporate conditions of a publicly owned treatment work (POTW) pretreatment program that has been approved in accordance with the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution) as enforceable conditions of the POTW's permit.

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order an amendment to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to, the following:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information not available at the time of permit issuance is received by the executive director, and such information justifies amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions To Be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

Source: The provisions of this §305.62 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3513; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 13, 1996, 21 TexReg 4999.

Cross References: This Section cited in 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.63, (relating to Renewal); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.70, (relating to Municipal Solid Waste Class I Modifications); 30 TAC §305.122, (relating to Characteristics of Permits); 30 TAC §305.127, (relating to Conditions To Be Determined for Individual Permits); 30 TAC §305.172, (relating to Determining Feasibility of Compliance and Adequate Operating Conditions); 30 TAC §305.184, (relating to Permit Amendment or Modification); 30 TAC §305.534, (relating to New Sources and New Dischargers); 30 TAC §311.4, (relating to Existing Facilities in Water Quality Areas); 30 TAC §311.14, (relating to Existing Facilities in Water Quality Areas); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.183, (relating to Applicability); 30 TAC §321.190, (relating to Renewal); 30 TAC §330.1, (relating to Declaration and Intent); 30 TAC §330.4, (relating to Permit Required); 30 TAC §330.15, (relating to Effective Date); 30 TAC §330.64, (relating to Additional Standard Permit Conditions for Municipal Solid Waste Facilities); 30 TAC §331.12, (relating to Conversion of Wells); 30 TAC §332.6, (relating to Compost and Mulch Operations Located at Municipal Solid Waste Facilities); 30 TAC §335.45, (relating to Effect on Existing Facilities); 30 TAC §335.112, (relating to Standards); 30 TAC §335.152, (relating to Standards); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 305.63. Renewal

The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) An application for renewal may be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment or modification shall also be filed before further action is taken. ~~For applications filed under the Texas Water Code, Chapter 26, if~~ an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for ~~renewal.~~

(4) If renewal procedures have been initiated before the permit expiration date, the existing permit will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Revocation and Suspension).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by §305.65 of this title (relating to Corrections of Permits), or §305.62(d) of this title (relating to Amendment) provided the requirements of §305.62(f) of this title (relating to Amendment) and §305.96 of this title (relating to Action on Application for Amendment) are satisfied.

~~(7) The executive director may grant permission for permittees of non-publicly owned treatment works to submit the information required by 40 Code of Federal Regulations §122.21(g)(10) after the permit expiration date.~~

Source: The provisions of this §305.63 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications).

§ 305.64. Transfer of Permits

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name

change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1) name and address of the transferee;

(2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

~~(4) a fee of $100 to be applied toward the~~ processing of the application, as provided in §305.53(a) of this title (relating to Application Fees);

(5) a sworn statement that the application is made with the full knowledge and consent of the ~~permittee if the transferee is filing the application;~~ and

(6) any other information the executive director may reasonably require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the approved transfer. This section is not intended to relieve a transfer or of any,liability.

~~(d) The executive director must be satisfied that~~ proof of any required financial responsibility is sufficient before transmitting an application for ~~transfer to the commission for further proceedings.~~

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

~~(f) The commission may refuse to approve a~~ transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the ~~transferee, if any.~~

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361, changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of 40 Code of Federal Regulations (CFR) Part 264, Subpart H, as adopted by reference in §335.152(a)(6) of this title (relating to Standards), until the new owner or operator has demonstrated to the executive director that he is complying with the requirements of 40 CFR Part 264, Subpart H. The new owner or operator must demonstrate compliance with 40 CFR Part 264, Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with 40 CFR Part 264, Subpart H, the executive director shall notify the old owner or operator that he no longer needs to comply with 40 CFR Part 264, Subpart H as of the date of demonstration.

~~(h) The commission may transfer permits to an~~ interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

(1) the permittee no longer owns the permitted facilities;

(2) the permittee is about to abandon or cease operation of the facilities;

(3) the permittee has abandoned or ceased operating the facilities; and

(4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

~~(1) the permittee no longer owns or controls the permitted facilities;~~

~~(2) if the facilities have not been built, and the~~ permittee no longer has sufficient property rights in the site of the proposed facilities;

(3) the permittee has failed or is failing to comply with the terms and conditions of the permit;

(4) the permitted facilities have been or are about to be abandoned;

(5) the permittee has violated commission rules or orders;

(6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

(8) transfer of the permit would maintain the quality of waste in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent ~~with this section.~~

Source: The provisions of this §305.64 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 19, 1989, 14 TexReg 3297; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §305.125, (relating to Standard Permit Conditions); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to Application Requirements).

~~§ 305.65. Corrections of Permits~~

The commission may make corrections to permits, either by reissuing the permit or by issuing an endorsement to the permit, without the necessity of observing the formal amendment procedures prescribed in this chapter:

(1) to correct a clerical or typographical error;

(2) to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(3) to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of;

(4) to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of; or

(5) to state more accurately any provision in a permit without changing the substance of any such provision.

Source: The provisions of this §305.65 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102.

Cross References: This Section cited in 30 TAC §305.63, (relating to Renewal); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to Application Requirements).

§ 305.66. Permit Denial, Suspension, and Revocation

(a) A permit or other order of the commission does not become a vested right and may be suspended or revoked for good cause at any time by order of the commission after opportunity for a public hearing is given. Good cause includes, but is not limited to, the following:

(1) the permittee has failed or is failing to comply with the conditions of the permit or a commission order, including failure to construct, during the life of the permit, facilities necessary to conform with the terms and conditions of the permit;

(2) the permit or the operations thereunder have been abandoned;

(3) the permit or other order is no longer needed by the permittee;

(4) the permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time;

(5) a determination that the permitted activity endangers human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm;

(6) the facility is being operated by a transferee before commission approval of the transfer;

~~(7) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the defini-~~

tion has been revised, or because a previous determination has been changed;

(8) for Class III injection wells, failure to achieve satisfactory restoration progress; or

(9) such other cause sufficient to warrant termination or suspension of the authorization.

(b) The authority to discharge waste into or adjacent to the water in the state under a waste discharge permit is subject to cancellation or suspension under the Texas Water Code, §26.084.

(c) The commission may, for good cause, deny, amend, revoke, or suspend, after notice and hearing according to §305.68 of this title (relating to Action and Notice on Petition for Revocation and Suspension), any permit it issues or has authority to issue for a solid waste storage, processing, or disposal facility, for good cause, for reasons pertaining to public health, air or water pollution, land use, or for violations of the Texas Solid Waste Disposal Act, or any other applicable laws or rules controlling the management of solid waste.

(d) When the executive director determines revocation or suspension proceedings are warranted, a petition requesting appropriate action may be filed by the executive director with the commission. A person affected by the issuance of a permit or other order of the commission may initiate proceedings for revocation or suspension by forwarding a petition to the executive director to be filed with the commission.

(e) If the executive director or an affected person intends to file a petition to revoke or suspend a permit, notice of the intention and a copy of the petition to be filed shall be personally served on or sent by registered or certified mail to the permittee at the last address of record with the commission. This notice shall be given at least 15 days before a petition for revocation or suspension is submitted to the executive director or filed with the commission for further proceedings. Failure to provide such notice shall not be jurisdictional.

(f) The commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if the commission finds after notice and hearing, that:

(1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;

(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant;

(3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by a rule of the commission;

(5) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(g) Before denying, suspending, or revoking a permit under this section, the commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by rule of the commission.

(h) The commission may not suspend a new commercial hazardous waste management permit on the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title (relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility).

(i) For applications for new hazardous waste management facility permits, the commission may deny such an application if it determines that the facility is not compatible with local land use pursuant to §335.180 of this title (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use).

(j) For applications for new commercial hazardous waste management facility permits, the commission may not deny such an application on the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title (relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility).

~~(k) For applications for any new commercial~~ hazardous waste management facility permits, the commission shall not grant such an application if the applicant is without experience in the particular hazardous waste management technology and has not conspicuously stated that lack of experience in the application, and the commission shall not grant such an application unless the applicant provides a summary of its experience, pursuant to §305.50(12)(D) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit). The commission may not deny an application for a new commercial hazardous waste management facility permit solely on the basis of lack of experience of the applicant.

(*l*) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste ~~management facility.~~

Source: The provisions of this §305.66 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective November 7, 1991, 16 TexReg 6051.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.63, (relating to Renewal); 30 TAC §305.67, (relating to Revocation and Suspension upon Request or Consent); 30 TAC §305.122, (relating to Characteristics of Permits); 30 TAC §305.141, (relating to Applicability); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to Application Requirements); 30 TAC §321.190, (relating to Renewal); 30 TAC §331.12, (relating to Conversion of Wells); 30 TAC §335.180, (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 305.67. Revocation and Suspension upon Request or Consent

(a) If a permittee no longer desires to continue a waste disposal activity or to dispose of waste under a permit, or is agreeable to a suspension of authorization to do so for a specified period of time, the permittee should file with the executive director a written request or a written consent and waiver not later than 10 days following receipt of notice of the intention to file a petition under §305.66 of this title (relating to Revocation and Suspension).

(b) If a permittee requests or consents to the revocation or suspension of the permit, the executive director may revoke or suspend the permit without the necessity of a public hearing or commission action. The executive director shall notify the commission of each such revocation or suspension.

Source: The provisions of this §305.67 adopted to be effective June 19, 1986, 11 TexReg 2594.

Cross References: This Section cited in 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to Application Requirements); 30 TAC §331.12, (relating to Conversion of Wells).

~~§ 305.68. Action and Notice on Petition for~~ Revocation or Suspension

(a) In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the commission, notice of which shall be given to the permittee not less than 30 days prior to the hearing by certified mail, return receipt requested, of the time and place of the hearing. For permits or orders involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, public notice shall be given by publication, by mail and by radio broadcast, in accordance with §§ 305.102-305.104 of this title (relating to Notice by Publication; Notice by Mail; and Radio Broadcasts).

(b) If the permittee requests or consents to the revocation or suspension of the permit and the executive director has not revoked or suspended the permit, the commission may take action at a regular meeting of the commission without holding a public hearing, provided notice of the hearing is given by first-class mail at least 10 days prior to the meeting. For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, notice of the hearing shall be given by first-class mail at least 30 days prior to the meeting.

Source: The provisions of this §305.68 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102.

Cross References: This Section cited in 30 TAC §305.66, (relating to Permit Denial, Suspension, and Revocation); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.184, (relating to ~~Application Requirements~~).

§ 305.69. Solid Waste Permit Modification at the Request of the Permittee

(a) This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are cov-

ered in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications).

(b) Class 1 modifications of solid waste permits.

(1) Except as provided in paragraph (2) of this subsection, the permittee may put into effect Class 1 modifications listed in Appendix I of this subchapter under the following conditions:

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), and §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the commission evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the

permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, the commission must:

(A) approve the modification request, with or without changes, and modify the permit accordingly;

(B) deny the request;

(C) determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days; or

(E) notify the permittee that it will decide on the request within the next 30 days.

(7) If the commission notifies the permittee of a 30-day extension for a decision, the commission must, no later than 120 days after receipt of the modification request:

(A) approve the modification request, with or without changes, and modify the permit accordingly;

(B) deny the request;

(C) determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification;

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days.

(8) If the commission fails to make one of the decisions specified in paragraph (7) of this subsection by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of §§335.111-335.127 of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities). If the commission approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraphs (6) and (7) of this subsection or this paragraph, such action cancels the temporary or automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §305.103(b) of this title (relating to Notice by Mail), and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date of the perma-

nent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendment) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of §§335.111-335.127 of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (e) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission may deny or change the terms of a Class 2 permit modification request under paragraphs (6)-(8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of §§335.151-335.179 of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses), and §§305.571-305.573 of this title (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §305.103 of this title (relating to Notice by Mail) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the commission. The notice shall include the following:

(A) all information required by §305.100(a) of this title (relating to Notice of Application);

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) identification of the location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of §§305.91-305.106 of this title (relating to Actions, Notice, and Hearing). When a permit is modified, only the conditions subject to modification are reopened.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of this subchapter, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than 180 days.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii)-(v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with 40 Code of Federal Regulations (CFR) Part 264 standards.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §305.103 of this title (relating to Notice by Mail). This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the standards of 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with 40 CFR, Part 268 or RCRA §3004;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §305.103(b) of this title (relating to Notice by Mail) within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the Administrative Procedure Act, the Government Code, Chapter 2002.

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR, Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to RCRA Subtitle C management standards; and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR Part 265 groundwater monitoring and financial responsibility requirements on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous.

or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Appendix I. The following appendix will be used for the purposes of Subchapter D which relate to solid waste permit modification at the request of the permittee.

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1
b. Other changes	2
5. Schedule of compliance	
a. Changes in interim compliance dates, with prior approval of the executive director	1[1]
b. Extension of final compliance date	3
6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director	1[1]
7. Changes in ownership or operational control of a facility, provided the procedures of § 305.65(g) are followed	1[1]
~~8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units pursuant to § 305.149(b)(2) or § 305.149(b)(4)~~	2
9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit pursuant to § 305.149(b)(3) or § 305.149(b)(4)	3
~~10. Any extension pursuant to § 305.149(b)(3) of a construction period time limit for commercial hazardous waste management units which has been previously authorized under § 305.149(b)(2)~~	3
B. General Facility Standards	
1. Changes to waste sampling or analysis methods:	
a. To conform with agency guidance or regulations	1
b. To incorporate changes associated with FO39 (multi-source leachate) sampling or analysis methods	1[1]
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	1[1]
d. Other changes	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations	1
b. Other changes	2
3. Changes in procedures for maintaining the operating record	1
4. Changes in frequency or content of inspection schedules	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees	2
b. Other changes	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures)	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed	1
c. Removal of equipment from emergency equipment list	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan	1
7. Construction quality assurance plan	
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specification	1
b. Other Changes	2

Note: When a permit modification (such as introduction of a new unit) requires a change in

Modifications	Class
facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification. (No change)	
C. Ground-water Protection	
1. Changes to wells:	
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system	2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well	1
2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director	1[1]
3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director	1[1]
4. Changes in point of compliance	2
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):	
a. As specified in the groundwater protection standard	3
b. As specified in the detection monitoring program	2
6. Changes to a detection monitoring program as required by § 335.164(8) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix	2
7. Compliance monitoring program:	
a. Addition of compliance monitoring program pursuant to § 335.164(7)(D) of this title (relating to Detection Monitoring Program), and § 335.165 of this title (relating to Compliance Monitoring Program)	3
b. Changes to a compliance monitoring program as required by § 335.165(10) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix	2
8. Corrective action program:	
a. Addition of a corrective action program pursuant to § 335.165(8)(B) of this title (relating to Compliance Monitoring Program) and § 335.166 of this title (relating to Corrective Action Program)	3
b. Changes to a corrective action program as required by § 335.166(8), unless otherwise specified in this appendix	2
D. Closure	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director	1[1]
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director	1[1]
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director	1[1]
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director	1[1]
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix	2
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under 40 CFR 264.113(d) and (e)	2
2. Creation of a new landfill unit as part of closure	3
3. Addition of the following new units to be used temporarily for closure activities:	

Modifications	Class
a. Surface impoundments	3
b. Incinerators	3
c. Waste piles that do not comply with 40 CFR 264.250(c)	3
d. Waste piles that comply with 40 CFR 264.250(c)	2
e. Tanks or containers (other than specified below	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director	1[1]
E. Post–Closure	
1. Changes in name, address, or phone number of contact in post-closure plan	1
2. Extension of post-closure care period	2
3. Reduction in the post-closure care period	3
4. Changes to the expected year of final closure, where other permit conditions are not changed	1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure	2
F. Containers	
1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below	3
b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below	2
c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1[1]
2. a. Modification of a container unit without increasing the capacity of the unit	2
b. Addition of a roof to a container unit without alteration of the containment system	1
3. Storage of different wastes in containers, except as provided in F(4) of this appendix:	
a. That require additional or different management practices from those authorized in the permit	3
b. That do not require additional or different management practices from those authorized in the permit	2

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Waste) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:	
a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1[1]
b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-	

Modifications	Class
containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
5. Other changes in container management practices (e.g., aisle space, types of containers, segregation)	2
G. Tanks	
1. a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below	3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below	2
c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation	2
d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation	1[1]
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1[1]
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/ −10% of the replaced tank provided:	1
a. The capacity difference is no more than 1500 gallons;	
b. The facility's permitted tank capacity is not increased; and	
c. The replacement tank meets the same conditions in the permit.	
4. Modification of a tank management practice	2
5. Management of different wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below	3
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below	2
c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1[1]
d. That do not require the addition of units or a change in the	

Modifications Class

treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)...1

te: See §305.69(g)of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified waste.

Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.....3
2. Replacement of a surface impoundment unit.....3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.....2
4. Modification of a surface impoundment management practice.....2
5. Treatment, storage, or disposal of different wastes in surface impoundments:
   a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....3
   b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....2
   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
   d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
6. Modifications of unconstructed units to comply with §§264.221(c), 264.222, 264.223 and 264.226(d)...1
7. Changes in response action plan:
   a. Increase in action leakage rate ...3
   b. Change in a specific response reducing its frequency or effectiveness.....3
   c. Other Changes.....2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified waste.

I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).
   1. Modification or addition of waste pile units:
      a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.....3
      b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity...2
   2. Modification of waste pile unit without increasing the capacity of the unit.....2
   3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and

Modifications	Class
meeting all waste pile conditions in the permit	1
4. Modification of a waste pile management practice	2
5. Storage or treatment of different wastes in waste piles:	
a. That require additional or different management practices or different design of the unit	3
b. That do not require additional or different management practices or different design of the unit	2
Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified waste.	
6. Conversion of an enclosed waste pile to a containment building unit	2
J. Landfills and Unenclosed Waste Piles	
1. Modification or addition of landfill units that result in increasing the facility's disposal capacity	3
2. Replacement of a landfill	3
3. Addition or modification or a liner, leachate collection system, leachate detection system, run-off control, or final cover system	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system	2
5. Modification of a landfill management practice	2
6. Landfill different wastes:	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified waste.	
7. Modifications of unconstructed units to comply with §§264.251(c), 264.252, 264.253 and 264.254(c), 264.301(c) 264.302, 264.303(e) and 264.304	1[1]
8. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness	3
c. Other Changes	2
K. Land Treatment	
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent	3
2. Modification of run-on control system	2
3. Modify run-off control system	3
4. Other modifications of land treatment unit component specifications or standards required in the permit	2
5. Management of different wastes in land treatment units:	
a. That require a change in permit operating conditions or unit design specifications	3
b. That do not require a change in permit operating conditions or unit design specifications	2

Modifications	Class
Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified waste.	
6. Modification of a land treatment management practice to:	
a. Increase rate or change method of waste application	3
b. Decrease rate of waste application	1
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions	2
8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops	3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2)	3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements	3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements	2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid	2
13. Changes in sampling, analysis, or statistical procedure	2
14. Changes in land treatment demonstration program prior to or during the demonstration	2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received	1[1]
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director	1[1]
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration	3
18. Changes in vegetative cover requirements for closure	2
L. Incinerators, Boilers and Industrial Furnaces	
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	2

Modifications	Class
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HC1/Cl_2, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards	2
5. Operating requirements:	
a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls	3
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit	2
6. Burning different wastes:	
a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit	2
Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified waste.	
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn	2
b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director	1
c. Changes in the operating requirements set in the permit	

Modifications	Class
for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director	1[1]
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director	1[1]
8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit	1
M. Corrective Action	
1. Approval of a corrective action management unit pursuant to 40 Code of Federal Regulations § 264.552	3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 Code of Federal Regulations § 264.553	2
N. Containment Buildings.	
1. Modification or addition of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a containment building with containment building that meets the same design standards provided:	
a. The unit capacity is not increased	1
b. The replacement containment building meets the same conditions in the permit	1
4. Modification of a containment building management practice	2
5. Storage or treatment of different waste in containment buildings:	
a. That require additional or different management practices	3
b. That do not require additional or different management practices	2

Source: The provisions of this §305.69 adopted to be effective October 29, 1990, 15 TexReg 6015; amended to be effective July 29, 1992, 17 TexReg 5090; amended to be effective June 7, 1993, 18 TexReg 3290; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 22, 1994, 19 TexReg 941; amended to be effective November 7, 1994, 19 TexReg 8543; amended to be effective April 17, 1995, 20 TexReg 2392; amended to be effective February 26, 1996, 21 TexReg 1137.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.64, (relating to Transfer of Permits); 30 TAC §305.102, (relating to Notice by Publication); 30 TAC §305.103, (relating to Notice by Mail); 30 TAC §305.106, (relating to Response to Comments); 30 TAC §305.144, (relating to Certification and Inspection); 30 TAC §305.149, (relating to Time Limitation for Construction of Commercial Hazardous Waste Management Units); 30 TAC §305.171, (relating to Determining Operational Readiness); 30 TAC §305.172, (relating to Determining Feasibility of Compliance and Adequate Operating Conditions); 30 TAC §305.184, (relating to Permit Amendment or Modification); 30 TAC §335.112, (relating to Standards); 30 TAC §335.152, (relating to Standards).

~~§ 305.70. Municipal Solid Waste Class I Modifications~~

(a) A permittee may put into effect a Class I modification to a municipal solid waste (MSW) permit provided that the permittee has received prior written authorization for such Class I modification from the executive director. In order to receive prior written authorization, the permittee must submit a modification request to the executive director specifying the changes to be made to permit conditions or to supporting documents referenced by the permit, and explaining in detail why such changes are necessary. The permittee must submit two copies of the modification request in accordance with §305.44 of this title (relating to Signatories to Applications). Failure to submit the modification request with complete information shall constitute grounds for returning the request to the permittee without further action.

(b) The permittee must send notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail) if the Class I permit modification identified in subsection (g) of this section is marked by a superscript 1. This notification must be made no later than 30 calendar days after the executive director acts upon the request. If the permittee fails to give notice as required, approval of the modification request is automatically revoked.

(c) No later that 60 calendar days after receipt of the modification request, the executive director must:

~~(1) approve the modification request, with or~~ without changes, and modify the permit accordingly;

(2) deny the request;

(3) request additional information concerning the request from the permittee; or

(4) determine that the modification request does not qualify as a Class I permit modification, and that the requested change requires a permit amendment pursuant to §305.62 of this title (relating to Amendment).

(d) If a request for a Class I permit modification is denied by the executive director, the permittee must comply with the original permit conditions. Any change in a term, condition, or provision of an MSW permit that is not authorized by the executive director as a Class I permit modification requires a permit amendment pursuant to §305.62 of this title (relating to Amendment).

(e) If after 60 days from receipt of a modification request that is specifically identified in subsection (g) of this section, the executive director fails to approve or deny the request or to notify the permittee that the requested modification requires a permit amendment pursuant to §305.62 of this title (relating to Amendment), the modification request shall be automatically approved. The executive director may extend this 60-day time period if necessary to review additional information submitted pursuant to subsection (c)(3) of this section. The length of the extension shall be equivalent to the amount of time necessary to review the additional information.

(f) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods set out in subsections (c) and (e) of this section.

(g) The following is a list of possible Class I modifications to an MSW permit:

(1) a change in the sequence of landfill development;

(2) a change in the size and/or shape of a trench to obtain a 3:1 side slope, as long as there is no increase in capacity;

(3) replacement of existing monitor wells that have been damaged or rendered inoperable, with no change to design or depth of the wells and a change in location of up to 20 feet horizontally;

(4) changes in the location of marker systems (i.e., grid markers);

~~(5) improvements to a fire protection plan;~~

~~(6) changes to interior road location in order~~ to prevent traffic through the disposal area;

(7) changes in interior road design and construction materials;

(8) increases in sampling frequency (e.g., for groundwater, methane, etc.);

(9) changes in excavation details, except for increases in depth that would change the SLQCP or increase the site life;

(10) corrections to the metes and bounds description of the permit boundaries that do not increase the size of the facility;

(11) upgrade of landfill liner design, installation, or quality control testing to reflect the requirements of revised regulations which provide for greater environmental protection;

(12) installation of a leachate collection system;

(13) installation of a methane gas monitoring system;

(14) installation of a methane gas collection system or the installation of additional collection wells to an existing gas collection system;

(15) changes in closure or post-closure care requirements to reflect the requirements of revised regulations which provide for increased environmental protection;

(16) the use of alternate daily cover on a trial basis not to exceed six months with one six-month extension allowable;

(17) changes regarding the use of alternate windblown waste control methods;

(18) substitution of an equivalent financial assurance mechanism;

(19) temporary changes in operating hours to address natural-disaster situations or to accommodate special community events;

(20) changes in the drainage control plan that improve internal stormwater runon/runoff handling without impacting offsite drainage;

(21) changes in the entry gate location or site layout that relocate gatehouse, office, or maintenance building locations, or add scales to the facility, so long as the changes do not alter access traffic patterns delineated in the site development plan and/or the permit;

(22) changes to a site layout plan that add or delete a properly registered or exempted MSW facility—a used or scrap tire collection area, a recycling collection area, a sludge/grease/grit ~~trap processing or stabilization facility, a petrole~~

~~um contaminated soil stabilization area, a regis~~tered transfer station, a citizens' collection area, a pesticide container collection area, a composting operation, or other activity properly registered with the commission;

(23) subject to the limitation under subsection (h) of this section, an increase in landfill height that meets one of the following conditions:

(A) the entire facility or a portion of the facility either ceases the receipt of solid waste within 365 days of executive director approval of the height increase and initiates formal closure of the entire facility or a portion of the facility, or has formally closed the facility or a portion of the facility; or

(B) the facility has submitted a request for a major permit amendment pursuant to §305.62(c)(1) of this title (relating to Amendments) to increase the height of the landfill; or

(C) the height increase is requested solely for the purpose of improving drainage from the filled area, and:

(i) the waste disposal area is not expanded into the limits of the buffer zone or within easements that exist; and

(ii) final contour elevations, including final cover, are no greater than 10 feet above the maximum final contour elevation of the contiguous landfilled area or phase of landfill development;

(24) a modification in the operation of a landfill that will change the incoming waste stream from a more restrictive waste stream to a less restrictive waste stream, i.e., a change from a Type I, II, or III landfill operation to a Type IV landfill operation may be granted, provided that the receipt of waste under the present operation has ceased and that the following conditions shall be satisfied.

(A) Permanent closure of the filled portion of the landfill shall be initiated in accordance with the regulations for closure of municipal solid waste landfills. Completion may occur after the approval of the request to change the site operation.

(B) The permittee shall provide a public notice of the proposed action to the general public by publishing the notice, within 15 days after the request, in a newspaper with general circulation in the area in which the landfill is ~~located, and submitting a certified copy of the notice, within 15 days after publication, to the~~ executive director as a record of this action.

(C) The permittee shall conduct a public meeting in the local area, within 30 days after the request, to describe the proposed action to the general public and provide evidence, within 15 days after the meeting, to the executive director that the meeting was held.

(D) The permittee shall submit, for approval and with the request for a change, documents that show the appropriate modifications to the site development plan and site operating plan to reflect the proposed change in operation.

(25) Changes to comply with the provisions of §330.203 of this title (relating to Special Conditions (Liner Design Constraints)).

(h) Authorization to increase the height of a landfill, in accordance with subsection (g)(23) of this section, may only be granted one time as a Class I modification. Subsequent requests for an increase in height require a permit amendment. Height increases granted under subsection (g)(23) of this section that exceed 10 feet above the approved final elevations must be justified and the request must demonstrate that an increase in the capacity or life of the site will not occur.

(i) In case of a request for a Class I modification for a change in a term, condition, or provision of an MSW permit not explicitly listed in subsection (g) of this section, the executive director shall make the determination as to whether the modification request may be processed as a Class I modification or whether the change requires a permit amendment pursuant to §305.62 of this title (relating to Amendment). In making this determination, the executive director shall consider the similarity of the requested change to those Class I modifications listed in subsection (g) of this section, as well as the following criteria.

(1) Class I modifications apply to minor changes to the facility or its operation that are routine in nature.

(2) Class I modifications do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

(j) A temporary authorization may be granted by the executive director for a term of not more than 180 days for activities or events that will prevent disruption of solid waste management activities. ~~The permittee must request a temporary authoriza-~~

tion and must include in the request a specific description of the activities to be conducted and an explanation of why the temporary authorization is necessary, reasonable, and unavoidable. A temporary authorization may be reissued for an additional term of 180 days if the circumstances warrant additional time or if the permittee has applied for an amendment or modification to the permit.

Source: The provisions of this §305.70 adopted to be effective June 7, 1993, 18 TexReg 3290; amended to be effective December 27, 1995, 20 TexReg 10788.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §330.1, (relating to Declaration and Intent); 30 TAC §330.4, (relating to Permit Required); 30 TAC §330.15, (relating to Effective Date); 30 TAC §330.64, (relating to Additional Standard Permit Conditions for Municipal Solid Waste Facilities); 30 TAC §330.70, (relating to Registration of Facilities That Recover Gas for Beneficial Use); 30 TAC §330.118, (relating to Hours of Operation); 30 TAC §330.133, (relating to Landfill Cover); 30 TAC §332.6, (relating to Compost and Mulch Operations Located at Municipal Solid Waste Facilities).

§ 305.71. Basin Permitting

(a) Upon receipt of wastewater discharge permit applications, excluding permits for confined animal feeding operations, the commission, to the greatest extent practicable, will evaluate all future applications within a single river basin within the same year. The future expiration dates for all permits issued after the effective date of this section shall be in accordance with the basin schedules in subsection (b) of this section. However, no permit shall be issued for a term of less than two years. If the schedule indicates a term of less than two years, then two terms between two and five years in length will be utilized in order to coincide with the schedule. There may be instances where two permit cycles are needed for some permits before they are on the basin cycle.

(b) The expiration dates of wastewater discharge permits issued after the effective date of this rule will be in accord with the following schedule.

BASIN	SEGMENT	EXPIRATION DATE
FISCAL YEAR 1996		
01: Canadian River	0100–0105	October 1, 1995
02: Red River	0200–0229	December 1, 1995
03: Sulphur River	0300–0306	January 1, 1996
04: Cypress Creek	0400–0409	February 1, 1996
05: Sabine River	0506–0515	March 1, 1996
	0500–0505	April 1, 1996
24: Bays and Estuaries	2411	June 1, 1996
06: Neches River	0610–0614	August 1, 1996
	0600–0609	August 1, 1996
08: Trinity River	0824–0841	September 1, 1996
FISCAL YEAR 1997		
08: Trinity River	0819–0823	October 1, 1996
	0805–0818	December 1, 1996
	0800–0804	February 1, 1997
10: San Jacinto River	1017	March 1, 1997
	1014	May 1, 1997
	1010–1013	June 1, 1997
	1007	September 1, 1997
FISCAL YEAR 1998		
10: San Jacinto River	1015–1016	December 1, 1997
	1009	February 1, 1998
	1008	March 1, 1998
	1006	May 1, 1998

BASIN	SEGMENT	EXPIRATION DATE
	1000–1005	July 1, 1998
07: Neches–Trinity Coastal	0700–0704	July 1, 1998
24: Bays and Estuaries	2412	July 1, 1998
	2422–2423	July 1, 1998
09: Trinity–San Jacinto Coastal	0900–0902	August 1, 1998
24: Bays and Estuaries	2426	August 1, 1998
	2428–2430	August 1, 1998
11: San Jacinto–Brazos Coastal	1100–1113	September 1998
FISCAL YEAR 1999		
24: Bays and Estuaries	2421	October 1, 1998
	2424–2425	October 1, 1998
	2427	October 1, 1998
	2431–2439	November 1, 1998
12: Brazos River	1242–1255	December 1, 1998
	1227–1241	March 1, 1999
	1220–1226	March 1, 1999
	1204–1219	May 1, 1999
	1200–1203	July 1, 1999
13: Brazos–Colorado Coastal	1300–1305	July 1, 1999
24: Bays and Estuaries	2441–2442	August 1, 1999
16: Lavaca	1600–1605	August 1, 1999
14: Colorado River	1417–1433	September 1, 1999
FISCAL YEAR 2000		
14: Colorado River	1400–1416	December 1, 1999
15: Colorado–Lavaca	1500–1502	December 1, 1999
24: Bays and Estuaries	2451–2452	December 1, 1999
	2453–2456	January 1, 2000
17: Lavaca–Guadalupe	1700	February 1, 2000
18: Guadalupe River	1800–1818	February 1, 2000
19: San Antonio River	1900–1913	March 1, 2000
20: San Antonio–Nueces Coastal	2000–2004	March 1, 2000
24: Bays and Estuaries	2461–2463	March 1, 2000
	2471–2473	March 1, 2000
	2481–2483	April 1, 2000
21: Nueces River	2100–2117	May 1, 2000
22: Nueces–Rio Grande Coastal	2200–2204	June 1, 2000
24: Bays and Estuaries	2484–2485	June 1, 2000
	2491–2494	July 1, 2000
23: Rio Grande	2300–2314	September 1, 2000

BASIN	SEGMENT	EXPIRATION DATE
25: Gulf of Mexico	2500	September 1, 2000

(c) Renewal applications for permits expiring on or after September 1, 1995, shall be due at least 180 days before the expiration date of the effective permit. The executive director may grant permission for a later date; however, applications must be submitted prior to the expiration date of the permit.

(d) The executive director may require submission of a renewal application sooner than the dates set out in subsections (b) and (c) of this section upon a determination that a particular waste disposal activity necessitates a more frequent evaluation.

(e) Permits generally will be issued to maintain a five-year cycle of the expiration date schedule in subsection (b) of this section. The commission may issue a permit for less than a five-year term if it determines that a shorter term is necessary.

Source: The provisions of this §305.71 adopted to be effective January 17, 1995, 20 TexReg 19.

Subchapter E. ACTIONS, NOTICE, AND HEARING

Cross References: This Subchapter cited in 30 TAC §312.10, (relating to Permit and Registration Applications Processing).

§ 305.94. Action on Application for Production Area Authorization

The commission may take action on an application for production area authorization at a regular meeting without a public hearing, provided notice of the application has been given by first-class mail at least 10 days prior to the meeting.

Source: The provisions of this §305.94 adopted to be effective June 19, 1986, 11 TexReg 2596.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas).

§ 305.95. Action on Application for Renewal

(a) Except as provided in subsections (b) and (c) of this section, the commission may take action on an application for renewal in the manner prescribed by §305.93 of this title (relating to Action on Application for Permit).

(b) The commission shall conduct a public hearing on an application for renewal if the executive director has recommended denial, unless the permittee files sufficient consent and waiver of hearing, in which case the provisions of subsection (a) of this section apply.

(c) The commission may take action on an application to renew a permit for a confined animal feeding operation within the definition of the Texas Water Code, §26.028(c), at a regular meeting without the necessity of holding a public hearing, provided notice of the application is given to persons as required by law by first-class mail at least 10 days prior to the meeting.

Source: The provisions of this §305.95 adopted to be effective June 19, 1986, 11 TexReg 2596.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions and Notice).

§ 305.96. Action on Application for Amendment or Modification

(a) Except as provided in subsection (d) of this section, the commission may take action on an application for a major amendment or a Class 3 solid waste permit modification in the manner prescribed by §305.93 of this title (relating to Action on Application for Permit).

(b) The commission may take action on an application for a minor amendment, except an application for a TPDES minor amendment, at a regular meeting of the commission without holding a public hearing, provided notice of the application is given to persons as required by law by first class mail at least 10 days prior to the meeting.

(c) The commission may take action on a request for Class 2 solid waste permit modification at a regular meeting of the commission without holding an evidentiary hearing, provided the notice procedures of §305.103 of this title (relating to Notice by Mail) have been completed.

(d) The commission shall conduct an evidentiary hearing on a petition for a major amendment, or a request for a Class 3 solid waste permit modification unless no person requests a hearing and the

permittee files sufficient consent and waiver of hearing, in which case the provisions of subsection (a) of this section apply.

Source: The provisions of this §305.96 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.63, (relating to Renewal); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.184, (relating to Permit Amendment or Modification); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions and Notice).

§ 305.97. Action on Application for Transfer

The commission may approve a transfer by order at a regular meeting of the commission.

Source: The provisions of this §305.97 adopted to be effective June 19, 1986, 11 TexReg 2596.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.125, (relating to Standard Permit Conditions); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions and Notice).

§ 305.100. Notice of Application

(a) A notice of application shall fairly set forth the substance of the application and proposed action, including, but not limited to, the location of any point of injection, discharge, or place of disposal, the rate of discharge or injection, the method for obtaining additional information about the application, the method for submitting a response or protest to the application and request for a hearing, and such other information necessary to give a fair appraisal of the application. The notice shall state whether a draft permit or a draft solid waste compliance plan has been prepared by the executive director.

(b) For requests for a discharge with a thermal component filed pursuant to the Clean Water Act, §316(a), 40 Code of Federal Regulations (CFR), Part 124, Subpart D, §124.57(a), Public Notice, which are in effect as of the date of TPDES program authorization, as amended, is adopted by reference.

(c) A copy of 40 CFR, Part 124, is available for inspection at the library of the Texas Water Commission, located on the fifth floor of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin.

Source: The provisions of this §305.100 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §281.30, (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste Management Facility Permit Applications); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions and Notice); 30 TAC §330.61, (relating to Land-Use Public Hearing).

§ 305.101. Notice of Hearing

(a) A notice of hearing shall identify the application, the date, time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, the proposed action, the requirements for submitting written protests, the method for obtaining additional information, and such other information the commission deems necessary. The notice shall state whether a draft permit has been prepared by the executive director.

(b) For applications involving solid waste management facilities under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon's Supplement 1991), the notice of hearing shall include the requirements of §305.103(c) and (f) of this title (relating to Notice by Mail).

(c) For applications involving hazardous solid waste facilities under the Act, the notice of hearing shall include a statement that a draft permit for the facility has been prepared and that a copy of the draft permit is available to the public.

(d) For an application involving hazardous solid waste management facilities, the notice of hearing shall include the statement that at least one session of the hearing will be held in the county in which the facility is located. The notice for a hearing session concerning a hazardous industrial solid waste facility shall be provided in accordance with §305.107 of this title (relating to Public Meeting and Notice Requirements).

(e) For Texas pollutant discharge elimination system (TPDES) permits, in addition to the general information described in this section, the public notice of hearing shall include the information

described in 40 Code of Federal Regulations §124.10(d)(1)(i)-(v) and (vii).

Source: The provisions of this §305.101 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 7, 1991, 16 TexReg 6051.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.107, (relating to Public Meeting and Notice Requirements); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions and Notice).

§ 305.102. Notice by Publication

(a) If notice by publication is required, the applicant shall cause the notice approved by the commission to be published in a newspaper regularly published, and generally circulated within the county and area wherein the proposed facility or discharge is to be located, and within each county and area wherein persons reside who would be affected by the facility or proposed discharge. For applications for solid waste permits, except as provided by §305.69(b)(2) and (c)(2) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), notice shall be published in each county and area which is adjacent or contiguous to each county wherein the proposed facility or discharge is to be located.

(b) The date of publication for a notice of application shall be as set forth in this subchapter for each type of action.

(c) The date of publication for a notice of hearing for any application covered by this chapter shall be not less than 30 days before the date set for hearing.

(d) The applicant is responsible for the cost of publication. If the applicant does not cause the notice approved by the commission to be published within 30 days of receipt of the notice from the commission, the commission may cause the notice to be published and the applicant must reimburse the commission for the cost of publication within 30 days of publication.

(e) Applications for a new hazardous waste management facility permit are additionally subject to the provisions of §305.107 of this title (relating to Public Meeting and Notice Requirements).

Source: The provisions of this §305.102 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective November 7, 1991, 16 TexReg 6051.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.68, (relating to Action and Notice on Petition for Revocation or Suspension); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions and Notice).

§ 305.103. Notice by Mail

(a) If notice by mail is required, the commission will transmit the notice by first-class mail to persons listed in subsection (b) of this section and to other persons who, in the judgment of the commission, may be affected. Except as provided by §305.69(b)(2) and (c)(2) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), personal service may be substituted for mailing.

(b) The notice shall be mailed to the following:

(1) the affected landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;

(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(3) the county judge and health authorities of the county in which the facility is located or in which waste is or will be disposed of;

(4) the Texas Department of Health;

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) for an injection well permit application, the Texas Water Well Drillers Board;

(8) the applicant;

(9) persons who request to be put on the mailing list, including participants in past commission permit proceedings for the facility or activity who have submitted a written request to be put on the mailing list;

(10) state and federal2 agencies for which notice is required in 40 Code of Federal Regulations §124.10(c);

(11) any other person the commission may elect to include;

~~(12) county judges as required by §305.93(c) of~~ this title (relating to Action on Application for Permit);

(13) for applications involving new solid waste management facilities, in accordance with subsection (f) of this section where any duplication of effort between subsections (a) and (f) of this section exists.

(c) The date of mailing for a notice of application shall be as set forth in this subchapter for each type2 of action.

(d) The date of mailing for a notice of hearing shall be at least 30 days before the date set for hearing.

(e) The applicant is responsible for the cost of required notice.

(f) For applications involving new solid waste management facilities, the applicant shall mail the notice of hearing to each residential or business address located within ½ mile of the new solid waste management facility and to each owner of real property located within ½ mile of such facility listed in the real property appraisal records of the appraisal district in which the facility is sought to be permitted as of the date the commission determines the permit application to be administratively complete. Such notice must be sent by mail and must be deposited with the United States Postal Service not more than 45 days or less than 30 days before the date of the hearing.

(g) For mailings required under subsection (f) of this section, the applicant must certify to the commission that the mailings were deposited as required by subsection (f) of this section. Acceptance of the certification creates a rebuttable presumption that the applicant has complied with the requirements of subsection (f) of this section.

Source: The provisions of this §305.103 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective November 7, 1991, 16 TexReg 6051.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.2, (relating to Definitions); 30 TAC §305.68, (relating to Action and Notice on Petition for Revocation or Suspension); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.70, (relating to Municipal Solid Waste Class I Modifications); 30 TAC §305.96, (relating to Action on Application for Amendment or Modification); 30 TAC §305.101, (relating to Notice of Hearing); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); ~~30 TAC §312.13, (relating to Actions and Notice); 30 TAC §335.224, (relating to Additional~~ Interim Status Standards for Burners).

§ 305.104. Radio Broadcasts

For an application to store, process, or dispose of hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, except for modifications under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), the applicant shall cause the public notice prepared by the commission to be broadcast over one or more local radio stations which are located in the affected area of a pending hazardous waste permit application. For purposes of this section, the affected area is an area to be determined by the commission on each application which includes the county in which the site is to be located and may include contiguous counties at the discretion of the commission. If the applicant does not cause the notice approved by the commission to be broadcast in the affected area within 30 days of receipt of the notice from the commission, the commission may cause the notice to be broadcast and the applicant shall reimburse the commission for the cost of the broadcast within 30 days of each broadcast.

Source: The provisions of this §305.104 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.68, (relating to Action and Notice on Petition for Revocation or Suspension); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas).

§ 305.105. Request for Public Hearing

(a) A request for public hearing under this chapter must be made in writing and submitted by an affected person to the commission within 30 days after the first publication of the notice of application, except that a request must be submitted within 45 days after the first publication of the notice of an application involving hazardous waste or 60 days after the first publication of the notice of a Class 3 modification of a solid waste permit under the Texas Solid Waste Disposal Act. The commission may extend the time allowed for submitting a request for public hearing.

(b) The written request shall contain the following information:

~~(1) the name, mailing address, and phone~~ number of the person making the request;

(2) a brief description of the interest of the person making the request, or of persons represented by the person making the request; and

(3) a brief description of how the application, if granted, would adversely affect such interest.

(c) An affected person is one who is determined by the commission to have an interest that may be adversely affected by action taken on the application.

(d) If the commission determines the request for public hearing is in compliance with this section, or that a public hearing would serve the public interest, the commission shall conduct a public hearing.

Source: The provisions of this §305.105 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective April 8, 1987, 12 TexReg 998; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.106, (relating to Response to Comments); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions and Notice).

§ 305.106. Response to Comments

This section is adopted for the purposes of conforming commission procedures to 40 Code of Federal Regulations §124.17. The commission, through the executive director or the office of hearings examiners, shall prepare and make available to the public a brief description and response to all significant comments on the draft permit which are filed with the commission during the 30 or 45-day comment period, as applicable, in accordance with the provisions of §305.93 of this title (relating to Action on Application for Permit), or which are made during the 60-day comment period in accordance with the provisions of §305.69(c) of this title (relating to Class 3 Modifications of Solid Waste Permits), or which are made during the public comment session of a hearing held pursuant to §305.105 of this title (relating to Request for Public Hearing), and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. The response to comments shall include a specification of which provisions of the draft permit, if any, have been changed in response to comments and the reasons for the change. If a ~~hearing is held and a hearings examiners's proposal for decision is issued, the response to comments~~ may be incorporated into the proposal for decision.

Source: The provision of this §305.106 adopted to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §312.13, (relating to Actions and Notice).

§ 305.107. Public Meeting and Notice Requirements

(a) When public meeting is required.

(1) The commission shall hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located.

(2) The commission, upon request of a person affected or as otherwise required by commission rule, shall hold a public meeting on an application for a Class 3 modification or on a major amendment to an existing facility's hazardous waste permit.

(3) A public meeting held as part of a local review process pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.063 (Vernon's Supplement 1991) meets the requirement of paragraphs (1) and (2) of this subsection if notice is provided as required by subsection (c) of this section.

(b) Public meeting not a contested case hearing. A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a (Supplement 1991).

(c) Notice requirements. If a public meeting is required under subsection (a) of this section or for applications involving hazardous waste under the Act and which are subject to the requirements of §305.101 of this title (relating to Notice of Hearing), then the applicant shall, not less than once each week during the three weeks preceding a public meeting, publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide an affidavit to the commission which certifies that notice was provided as required by this section. Acceptance of such an affidavit by the commission shall create a rebuttable presumption that ~~the applicant has complied with this section.~~

~~(1) The published notice may not be smaller~~ than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

(A) the permit application number;

(B) the applicant's name;

(C) the proposed location of the facility; and

(D) the location and availability of copies of the permit application.

(2) The applicant must pay the costs of the required notice.

Source: The provisions of this §305.107 adopted to be effective November 7, 1991, 16 TexReg 6051.

Cross References: This Section cited in 30 TAC §305.101, (relating to Notice of Hearing); 30 TAC §305.102, (relating to Notice by Publication); 30 TAC §330.65, (relating to Registration for Solid Waste Management Facilities); 30 TAC §330.236, (relating to ~~Assessment of Corrective Measures~~).

SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

§ 305.121. Applicability

The provisions of this subchapter establish the characteristics and standards for permits issued for injection wells, waste discharge, and solid waste management, including sewage sludge.

Source: The provisions of this §305.121 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.151, (relating to Applicability).

§ 305.122. Characteristics of Permits

(a) Compliance with a Resource Conservation and Recovery Act (RCRA) permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) become effective by statute;

(2) are promulgated under Title 40 Code of Federal Regulations, Part 268 restricting the placement of hazardous wastes in or on the land. or

(3) are promulgated under Title 40 Code of Federal Regulations, Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response through the Class 1 permit modifications procedures of Title 40 Code of Federal Regulations, §270.42 (concerning permit modification at the request of the permittee).

(b) A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee.

(c) The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

~~(d) Except for any toxic effluent standards and~~ prohibitions imposed under Clean Water Act (CWA), §307, and standards for sewage sludge use or disposal under CWA, §405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§301, 302, 306, 307, 318, 403, and 405; however, a TPDES permit may be amended or revoked during its term for cause as set forth in §305.62 and §305.66 of this title (relating to Amendment; and ~~Permit Denial, Revocation, and Suspension~~).

Source: The provisions of this §305.122 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 26, 1996, 21 TexReg 1137.

Cross References: This Section cited in 30 TAC §305.151, (relating to Applicability); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).

~~§ 305.123. Reservation in Granting Permit~~

Every permit is subject to further orders and rules of the commission. In accordance with the procedures for amendments and orders, the commission may incorporate into permits already granted any condition, restriction, limitation, or provision reasonably necessary for the administration and enforcement of Texas Water Code, Chapters 26, 27, and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

Source: The provisions of this §305.123 adopted to be effective June 19, 1986, 11 TexReg 2597.

Cross References: This Section cited in 30 TAC §305.151, (relating to Applicability); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).

§ 305.124. Acceptance of Permit, Effect

Acceptance of the permit by the person to whom it is issued constitutes an acknowledgment and agreement that such person will comply with all

the terms and conditions embodied in the permit, and the rules and other orders of the commission.

Source: The provisions of this §305.124 adopted to be effective June 19, 1986, 11 TexReg 2597.

Cross References: This Section cited in 30 TAC §305.151, (relating to Applicability); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).

§ 305.125. Standard Permit Conditions

The following conditions are applicable to all permits issued within the scope of this chapter, and shall be incorporated into each permit expressly or by reference to this chapter.

~~(1) The permittee has a duty to comply with all~~ conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Solid Waste Disposal Act, and for Texas pollutant disposal elimination system (TPDES) permits the Clean Water Act (CWA), and is grounds for ~~enforcement~~ action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or of an ~~application for a permit for another facility.~~

(2) The permittee must apply for an amendment or renewal prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity will terminate upon the effective denial of said application.

~~(3) It shall not be a defense for a permittee in~~ an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the executive director, upon request, copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director prior to physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A) Report of such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission of such information shall also be provided within five days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(B) The following shall be included as information which must be reported within 24 hours under this paragraph:

(i) any unanticipated bypass which exceeds any effluent limitation in a TPDES permit;

(ii) violation of a maximum daily discharge limitation for any of the pollutants listed in a TPDES permit to be reported within 24 hours.

(10) Inspection and entry shall be allowed as prescribed in the Texas Water Code, Chapters 26-28, the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §7, and 40 Code of Federal Regulations (CFR) §122.41(i). The statement in the Texas Water Code, §26.014, that commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but

merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

(11) Monitoring and reporting requirements are as follows.

(A) Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

(B) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR, Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, application, or certification. This period may be extended at the request of the executive director.

(C) Records of monitoring activities shall include the following:

(i) date, time, and place of sample or measurement;

(ii) identity of individual who collected the sample or made the measurement;

(iii) date of analysis;

(iv) identity of the individual and laboratory who performed the analysis;

(v) the technique or method of analysis; and

(vi) the results of the analysis or measurement.

(12) Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly shall be reported to the executive director as promptly as possible.

(13) A permit may be transferred only according to the provisions of §305.64 of this title (relating to Transfer of Permits) and §305.97 of this title (relating to Action on Application for Transfer).

(14) All reports and other information requested by the executive director shall be signed by the person and in the manner required by §305.128 of this title (relating to Signatories to Reports).

(15) A permit may be amended, suspended and reissued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(16) A permit does not convey any property rights of any sort or any exclusive privilege.

(17) Monitoring results shall be provided at the intervals specified in the permit.

(18) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

(19) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application, or in any report to the executive director, it shall promptly submit such facts or information.

~~(20) The permittee is subject to administrative~~, civil, and criminal penalties, as applicable, pursuant to the Texas Water Code, §§26.136, 26.212, and 26.213, for violations including, but not limited to, the following:

(A) negligently or knowingly violating CWA, §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, §402, or any requirement imposed in a pretreatment program approved under CWA, §402(a)(3) or §402(b)(8);

(B) falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under a permit; or

(C) knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or non-~~compliance~~.

Source: The provisions of this §305.125 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3513; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.126, (relating to Additional Standard Permit Conditions for Waste Discharge Permits); 30 TAC §305.145, (relating to Release or Discharges of

Solid Waste); 30 TAC §305.151, (relating to Applicability); 30 TAC §305.535, (relating to Bypasses from TPDES Permitted Facilities); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.188, (relating to Permit Issuance).

§ 305.126. Additional Standard Permit Conditions for Waste Discharge Permits

(a) Whenever flow measurements for any sewage treatment plant facility in the state reaches 75% of the permitted average daily flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever the average daily flow reaches 90% of the permitted average daily flow for three consecutive months, the permittee shall obtain necessary authorization from the commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75% of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If in the judgment of the executive director the population to be served will not cause permit noncompliance, then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the Water Quality Division of the commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

(b) The permittee shall give notice to the executive director as soon as possible of any planned physical alterations or additions to the permitted facility. In addition to the requirements of §305.125(7) of this title (relating to Standard Permit Conditions), notice shall also be required under this subsection when:

(1) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in §305.534 of this title (relating to New Sources and New Dischargers); or

(2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 Code of Federal Regulations (CFR) 122.42(a)(1) as adopted by §305.531(a) of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);

(3) the alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(c) If the permittee is a new discharger, it must provide quantitative data described in 40 CFR §122.21(h)(4)(i) and (ii) no later than two years after commencement of discharge; however, the permittee need not conduct tests which the permittee has already performed and reported under the discharge monitoring requirements of its TPDES permit.

Source: The provisions of this §305.126 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective June 25, 1990, 15 TexReg 3416; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective April 24, 1995, 20 TexReg 2708.

Cross References: This Section cited in 30 TAC §305.48, (relating to Additional Contents for Applications for Wastewater Discharge Permits); 30 TAC §305.151, (relating to Applicability); 30 TAC §312.11, (relating to Permits).

§ 305.127. Conditions To Be Determined for Individual Permits

The following conditions are to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable shall be incorporated into the permit expressly or by reference.

(1) Duration.

(A) Injection well permits.

(i) Permits for Class I wells shall be effective for a fixed term not to exceed 10 years.

(ii) Permits for Class III wells or projects may be effective for the life of the well or project, and shall be reviewed at least once every five years.

(B) Solid waste permits.

(i) Hazardous waste permits shall be effective for a fixed term not to exceed 10 years.

(ii) Other solid waste permits may be effective for the life of the project.

(iii) Each permit for a land disposal facility used to manage hazardous waste shall be reviewed by the executive director five years from the date of permit issuance or reissuance and shall be modified as necessary by the commission, as provided in §305.62(e) of this title (relating to Amendment).

~~(C) Waste discharge permits.~~

(i) Texas pollutant discharge elimination system (TPDES) permits, including sludge permits, shall be effective for a term not to exceed five years.

(ii) All other permits shall be effective as follows.

(I) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be effective for a term not to exceed five years.

(II) Confined animal feeding operation permits may be effective for the life of the project.

(III) Other wastewater permits, including permits which regulate land disposal systems, shall be effective for a term not to exceed 10 years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be effective for a term not to exceed 10 years.

(E) Term of permit. The term of a permit shall not be extended by amendment beyond the maximum duration specified in this section.

(F) Duration of permit. The executive director may recommend that a permit be issued and the commission may issue any permit for a duration that is less than the full allowable term under this section.

(2) Monitoring, recording, and reporting.

(A) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods shall be specified by the commission as appropriate.

(B) The type, intervals, and frequency of monitoring shall be set to yield data representative of the monitored activity, at a minimum as specified in commission rules for monitoring and reporting.

(C) Other requirements for monitoring and reporting shall be set at a minimum as specified in commission rules for monitoring and reporting.

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate act, and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit. For TPDES permits the schedule of compliance shall require compliance not later than authorized by Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

(C) Reporting requirements for each schedule of compliance shall be specified by the commission as appropriate. Reports of progress and completion shall be submitted to the executive director no later than 14 days after each schedule date.

(D) For TPDES permits the following additional conditions for schedules of compliance apply.

(i) The first TPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge.

(ii) For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(iii) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the permit schedule shall set forth interim requirements and the dates for their achievement.

(4) Requirements for individual programs.

~~(A) Requirements to provide for and assure compliance with standards set by the rules of~~

~~the commission and the laws of Texas shall be~~ determined and included in permits on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment. Reference is made to Chapter 330 of this title (relating to Municipal Solid Waste) for municipal solid waste facility standards, to Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, and to Chapter 309 of this title (relating to Effluent Standards) for waste discharge standards and to Chapter 329 of this title (relating to Drilled or Mined ~~Shafts) for drilled or mined shaft standards.~~

(B) Any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of an application for a permit or prior to the amendment, modification, or suspension and reissuance of a permit shall be included in the permit.

~~(C) New, amended, modified, or renewed~~ permits shall incorporate any applicable requirements contained in Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, Chapter 309 of this title (relating to Effluent Standards) (waste discharge standards), and Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled ~~or mined shaft standards.~~

(5) Wastes authorized.

~~(A) Injection well permits. Each category of~~ waste to be disposed of by injection well shall be authorized in the permit.

(B) Drilled or mined ~~shaft~~ permits. Each category of waste to be handled, stored, processed, or disposed of in a drilled or mined shaft, or in associated surface facilities shall be ~~authorized in the permit.~~

(C) Unauthorized wastes. Wastes not authorized by permit are prohibited from being transported to, stored, and processed or disposed of in a permitted facility.

~~(6) Permit conditions. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or requirements must be given in the permit.~~

Source: The provisions of this §305.127 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 13, 1996, 21 TexReg 4999.

Cross References: This Section cited in 30 TAC §305.50, (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.141, (relating to Applicability); 30 TAC §305.151, (relating to Applicability); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedures for Making Application for a Permit).

§ 305.128. Signatories to Reports

(a) All reports requested by permits and other information requested by the executive director shall be signed by a person described in §305.44(a) of this title (relating to Signatories to Applications) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) the authorization is made in writing by a person described in §305.44(a) of this title (relating to Signatories to Applications);

(2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the applicant, such as the position of plant manager, operator of a well or well field, environmental manager, or a position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) the written authorization is submitted to the executive director.

(b) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(c) Any person signing a report required by a permit shall make the certification set forth in §305.44(b) of this title (relating to Signatories to Applications).

Source: The provisions of this §305.128 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.125, (relating to Standard Permit Conditions); 30 TAC §305.151, (relating to Applicability); 30 TAC §305.172, (relating to Determining Feasi-

bility of Compliance and Adequate Operating Conditions); 30 TAC §305.183, (relating to Certification); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).

~~§ 305.129. Variance Procedures~~

The following regulations contained in 40 Code of Federal Regulations, which are in effect as of the date of Texas pollutant discharge elimination system (TPDES) program authorization, as amended, are adopted by reference:

(1) Part 122, Subpart B—Permit Applications and Special National Pollutant Discharge Elimination System (NPDES) Program Requirements, §122.21(m), providing requirements for variance requests by nonpublicly owned treatment works;

(2) Part 122, Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(n), providing requirements for various requests by publicly owned treatment works (POTWs);

(3) Part 122, Subpart C—Permit Applications and Special NPDES Program Requirements, §122.21(o), providing requirements for expedited variance procedures and time extensions;

(4) Part 124, Subpart D—Specific Procedures Applicable to NPDES Permits, §124.62, providing decision-making procedures for variances.

Source: The provisions of this §305.129 adopted to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §312.11, (relating to Permits).

SUBCHAPTER G. ADDITIONAL CONDITIONS FOR SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS

§ 305.141. Applicability

(a) Unless otherwise stated, the conditions contained in this subchapter apply to all hazardous and industrial solid waste storage, processing, or disposal permits. These conditions are in addition to those set forth in §305.66 of this title (relating to Revocation and Suspension).

(b) In addition to the conditions established under §305.127(4) of this title (relating to Conditions to be Determined for Individual Permits), each permit for a facility used for the storage, processing, and disposal of hazardous waste shall include:

(1) each of the applicable requirements specified in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities); and

(2) a list of the wastes or classes of wastes which will be processed, stored, or disposed of at the facility, and a description of the processes to be used for the processing, storage, or disposal of such hazardous wastes at the facility, including the design capacity of each storage, processing, and disposal unit. Except in the case of containers, the description must identify the particular wastes or classes of wastes which will be processed, stored, or disposed of in particular equipment or locations (e.g., halogenated organics may be stored in Tank A and metal hydroxide sludges may be disposed of in landfill cells B, C, and D).

Source: The provisions of this §305.141 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective June 13, 1996, 21 TexReg 4999.

§ 305.142. Duty to Comply

The permittee need not comply with the conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency order issued by the commission.

Source: The provisions of this §305.142 adopted to be effective June 19, 1986, 11 TexReg 2597.

§ 305.143. Recordkeeping

For those permits containing a groundwater monitoring requirement, the permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations for the active life of the facility and for disposal facilities for the post-closure care period as well.

Source: The provisions of this §305.143 adopted to be effective June 19, 1986, 11 TexReg 2597.

§ 305.144. Certification and Inspection

For a new facility, the permittee may not commence storage, processing, or disposal of solid waste; and for a facility being modified, the permittee may not process, store, or dispose of solid waste in the modified portion of the facility, except as provided in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) until:

(1) the permittee has submitted to the executive director by certified mail or hand delivery a letter signed by the permittee and a Texas registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(2) the executive director has inspected the modified or newly constructed facility and finds

it is in compliance with the conditions of the permit; or if within 15 days of submission of the letter required by paragraph (1) of this section, the permittee has not received notice from the executive director of an intent to inspect, prior inspection is waived, and the permittee may commence processing, storage, or disposal of solid waste.

Source: The provisions of this §305.144 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 29, 1990, 15 TexReg 6015.

§ 305.145. Release or Discharges of Solid Waste

(a) The following shall be included as information which must be reported orally within 24 hours pursuant to §305.125(9) of this title (relating to Standard Permit Conditions):

(1) information concerning release of any solid waste that may cause an endangerment to public drinking water supplies;

(2) any information of a release or discharge of solid waste, or of a fire or explosion from a facility, which could threaten the environment or human health or safety outside the facility. The description of the occurrence and its cause shall include:

(A) name, address, and telephone number of the owner or operator;

(B) name, address, and telephone number of the facility;

(C) date, time, and type of incident;

(D) name and quantity of material(s) involved;

(E) the extent of injuries, if any;

(F) an assessment of actual or potential hazards to the environment and human health or safety outside the facility, where this is applicable; and

(G) estimated quantity and disposition of recovered material that resulted from the incident.

(b) The executive director may waive the five-day written notice requirement under §305.125(9) of this title (relating to Standard Permit Conditions) in favor of a written report pursuant to this section within 15 days.

Source: The provisions of this §305.145 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective April 8, 1987, 12 TexReg 998.

§ 305.146. Reporting

The following reports shall be submitted:

(1) manifest discrepancy report required by §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); if a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within 15 days, the permittee must submit a letter report including a copy of the manifest to the executive director. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I industrial hazardous or nonhazardous solid waste);

~~(2) waste report required by §335.15(c) of this~~ title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); a waste report must be submitted to the executive director on a monthly basis. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I hazardous or nonhazardous industrial solid waste);

(3) annual report required by §335.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators) and §335.71 of this title (relating to Annual Reporting); an annual report must be submitted covering facility activities during the previous calendar year;

(4) monthly summary required by §335.15(b) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators); a monthly summary must be submitted covering facility activities during the previous calendar year. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I waste hazardous or nonhazardous industrial ~~solid waste).~~

Source: The provisions of this §305.146 adopted to be effective June 19, 1986, 11 TexReg 2597.

~~§ 305.147. Monitoring of Commercial Hazardous Waste Management Facility Operations~~

Any ~~issued, amended, modified,~~ transferred, ~~extended, or renewed commercial hazardous waste~~

~~management facility permit shall include the fol~~lowing requirements.

(1) Within the first year after commission action on the permit the facility owner or operator shall provide notice to affected persons of intent to have an independent annual environmental audit of the facility performed. The notice shall be issued in accordance with the following procedure.

(A) The notice shall state the names of at least three independent inspectors nominated by the facility owner or operator to perform the environmental audit and shall be published in the newspaper of the largest general circulation that is published in the county in which the facility is located and all adjacent counties or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The facility owner or operator shall not nominate an inspector who is employed or who has been employed by the facility.

(B) The notice shall announce a meeting time and place, to be located near the facility location, be held within 15 days of the published notice in order for the facility to receive comments from and allow for participation by interested affected persons in the selection of the independent inspector. The interested affected persons may either agree to one of the nominated independent inspectors or nominate other independent inspectors if they do not approve of the nominee list. The selection of the independent inspector shall be agreed to by the facility owner or operator and the interested affected persons no later than 30 days from the date of the meeting. The name of the selected independent inspector shall be submitted to the commission no later than 15 days from the date of selection for the commission's approval. The commission shall approve the independent inspector after it has determined that the independent inspector has the necessary expertise to perform the audit and does not have a conflict of interest with any of the parties involved in the inspector selection.

(C) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

(i) the facility owner's or operator's name;

(ii) the location of the facility;

~~(iii) the facility permit number;~~

~~(iv) the time and date of the scheduled~~ annual environmental audit;

(v) the names of at least three nominated independent inspectors;

(vi) the date and time and location of the selection meeting; and

(vii) the name and telephone number of a facility contact person.

(D) The facility owner or operator shall provide a copy of the published notice to local jurisdictions where the facility is located.

(E) The facility owner or operator shall provide the commission with an affidavit including a newspaper tear sheet of the published notice and sworn statement of the editor or publisher certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(2) If the facility owner or operator and interested affected persons cannot agree on the selection of an independent inspector within the time frame specified in paragraph (1)(B) of this section, the commission shall select an independent inspector. The commission's selection, however, shall not be limited to either the facility owner or operator's nominee list or the interested affected persons' nominee list. The commission shall take steps necessary to assure that the independent inspector or entity selected to perform the audit has the necessary expertise to perform the audit, is not a business competitor of the facility, and does not have a conflict of interest with any of the parties involved in the inspector selection.

(3) The facility owner or operator shall pay the cost of notice required to be provided under this section.

(4) The facility owner or operator shall be responsible for the costs of an independent annual environmental audit. The facility owner or operator shall also maintain responsibility for procuring the selected independent inspector. The commission shall not be a party to such procurement nor warrant the workmanship of the selected inspector.

(5) The facility owner or operator shall submit the results of an independent annual environmental audit in writing to the executive director and must mail a copy of the audit to those affected persons who participated in the selection of the independent inspector.

(6) The scope of the independent annual environmental audit may encompass any and all provisions of environmental permits required for the facility and all relevant statutes and regulations regarding the management of the facility.

(7) The facility is not required to perform the annual independent environmental audit if the facility does not receive any comments from affected persons. If the facility performs the independent audit despite lack of response, the facility must obtain the commission's approval of the selected independent inspector prior to the audit.

(8) The facility shall provide for fence line and ambient air quality monitoring if and as required by the commission.

Source: The provisions of this §305.147 adopted to be effective November 7, 1991, 16 TexReg 6051.

§ 305.148. Impact of New Hazardous Waste Management Facilities on Local Land Use

Based on its assessment of an application for a new hazardous waste management facility permit, in accordance with §335.180 of this title (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use), the commission may impose permit conditions deemed to be necessary to minimize or mitigate detrimental impacts on local land use.

Source: The provisions of this §305.148 adopted to be effective November 7, 1991, 16 TexReg 6051.

Cross References: This Section cited in 30 TAC §335.180, (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use).

§ 305.149. Time Limitation for Construction of Commercial Hazardous Waste Management Units

(a) Applicability. This section applies to facilities which provide commercial capacity for the storage, processing or disposal of hazardous waste and for which permit applications, Class 3 permit modification requests or major permit amendment requests are filed after the effective date of this rule.

(b) Schedule for construction of commercial hazardous waste management units.

(1) The facility owner or operator shall construct all permitted units within two years of final administrative and judicial disposition of the permit, modification or amendment referenced in subsection (a) of this section. Within 90 days after the end of the two-year construction period time limit, the facility owner or operator shall certify to the executive director that the unit has been constructed in accordance with applicable permit provisions.

(2) A one-time six-month extension to the two-year construction period time limit may be requested as a Class 2 permit modification. All modification requests and subsequent procedures must comply with applicable provisions of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request. The request must be made within the initial two-year period and, if granted, the six-month extension shall begin at the end of the initial two-year construction period time limit specified under paragraph (1) of this subsection. Construction of the unit is authorized under this subsection until the commission takes final action on the modification request; however, in no event shall authorization continue under this subsection beyond six months following the end of the initial two-year construction period specified under paragraph (1) of this subsection. Within 90 days of the end of the authorized extension period, the facility owner or operator shall certify to the executive director that the unit has been constructed in accordance with applicable permit provisions.

(3) Extensions for greater than six months, or any extension to the construction period time schedule authorized under an approved Class 2 permit modification pursuant to paragraph (2) of this subsection, shall be requested as a Class 3 permit modification. All requests and subsequent procedures must comply with applicable provisions of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.

(A) Extension requests made under this paragraph shall be submitted during the periods authorized under paragraph (1) or (2) of this subsection. Construction of the unit is authorized under this subsection until the commission takes final action on the modification request.

(B) The commission shall not consider requests made under this paragraph which are submitted after the expiration of the time peri-

~~ods authorized under paragraph (1) or (2) of~~ this subsection.

(4) Under circumstances which require a delayed or staged unit construction schedule longer than that specified under paragraph (1) of this subsection, justification for the proposed extended schedule shall be submitted with the permit application. The submitted schedule shall become part of the permit only upon the approval of the commission. Requests for changes to the approved schedule submitted during the period covered by the approved schedule shall comply with Class 2 or Class 3 permit modification rules, pursuant to §305.69. The class of the modification shall be determined by the length of the extension requested. An extension request of six months or less shall be a Class 2 modification and an extension request of greater than six months shall be a Class 3 modification request. All requests and subsequent procedures must comply with applicable provisions of §305.69 and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.

(c) Authorization status. Unit construction or management of hazardous waste in a unit is not authorized under any of the following conditions:

(1) the permittee has not constructed the unit within the time period specified under subsection (b)(1) of this section and:

(A) the permittee does not submit a modification request as specified in subsection (b)(2) or (3) of this section; or

(B) the commission has denied a request for an extension under subsection (b)(2) or (3) of this section and the construction period time limit specified in subsection (b)(1) or (2) of this section has expired;

(2) the unit has not been constructed within the time period specified in the permit as per subsection (b)(4) of this section and:

(A) the permittee does not submit a modification request as specified in subsection (b)(4) of this section; or

(B) the commission has denied a request for an extension under subsection (b)(4) of this section and the construction period time limit specified in the permit has expired.

Source: The provisions of this §305.149 adopted to be effective ~~November 23, 1994, 19 TexReg 8863.~~

§ 305.150. Incorporation of References

When used in this chapter (relating to Consolidated Permits), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended and adopted in the Code of Federal Regulations through June 2, 1994, at 59 FedReg 28484.

Source: The provisions of this §305.150 adopted to be effective November 20, 1996, 21 TexReg 10982.

Cross References: This Section cited in 30 TAC §305.172, (relating to Determining Feasibility of Compliance and Adequate Operating Conditions).

~~Subchapter H. ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS~~

~~§ 305.151. Applicability~~

Unless stated otherwise, the following conditions apply to all Class I and Class III injection well permits and shall be incorporated into the permit expressly or by reference. The commission may require such conditions for Class V injection well permits as are necessary to prevent pollution of fresh water. These conditions are in addition to those set forth in §§305.121-305.128 of this title (relating to Permit Characteristics and Conditions).

Source: The provisions of this §305.151 adopted to be effective June 19, 1986, 11 TexReg 2598.

§ 305.152. Corrective Action

(a) For such wells within the area of review which are inadequately constructed, completed, or abandoned, and which as a result of the injection activities may cause the pollution of fresh water, the commission shall prescribe or incorporate into the permit a condition requiring corrective action adequate to prevent such pollution. Corrective action will be required unless the owner or operator demonstrates to the executive director that, despite the owner or operator's best efforts, he is unable to obtain the necessary permission to undertake such action.

(b) The criteria of §331.44 of this title (relating to Corrective Action Standards) will be used to determine adequacy.

(c) A permit issued for an existing injection well requiring corrective action may include a compliance schedule prescribing the time within which the corrective action must be completed.

(d) As part of the corrective action plan, the commission may impose an injection pressure limitation ~~that does not cause the pressure in the~~

injection zone to exceed hydrostatic pressure in those wells described in subsection (a) of this section, which condition shall expire upon adequate completion of all corrective action measures.

(e) Action prescribed by a corrective action plan for new wells or new areas must be completed to the satisfaction of the executive director before operation of the well begins.

(f) In the event that, after an authorization for injection has been granted, additional information is submitted or discovered that a well within the applicable area of review might pose a hazard to a freshwater aquifer, the commission may prescribe a corrective action plan and compliance schedule as a condition for continued injection activities.

Source: The provisions of this §305.152 adopted to be effective June 19, 1986, 11 TexReg 2598.

§ 305.154. Standards

Although the commission may impose stricter standards where appropriate, at a minimum, the permittee shall comply with the standards prescribed by Chapter 331 of this title (relating to Underground Injection Control), and the sections referenced herein.

(1) Construction requirements. Section 331.62 and §331.82 of this title (relating to Construction Standards; Construction Requirements).

(2) Compliance schedule. The commission may establish a compliance schedule for existing wells to achieve compliance with the requirements of this section.

(3) Construction plans. Changes in construction plans shall be approved by certification under §331.45 of this title (relating to Certification of Construction and Completion), or, if required, by permit amendment before such changes may be physically incorporated into construction of the well.

(4) Commencing operations. Commencement of injection operations prior to certification by the executive director that construction and completion are compliant shall constitute a violation of the permit and may be considered grounds for revocation or suspension of the permit, as well as for enforcement action.

(5) Operating requirements. Section 331.63 of this title (relating to Operating Requirements) and §331.83 of this title (relating to Operating Requirements).

(6) Monitoring and reporting. Section 331.64 and §331.65 of this title (relating to Monitoring Requirements; Reporting Requirements), §331.84 and §331.85 of this title (relating to Monitoring Requirements; Reporting Requirements); or §§331.101-331.107 of this title (relating to Standards for Class III Well Production Area Development).

(7) Plugging. The permittee shall notify the executive director and obtain approval before plugging an injection well.

(8) Plugging and abandonment requirements. The permittee shall notify the executive director and obtain approval before plugging an injection well. Section 331.46 of this title (relating to Plugging and Abandonment Standards).

(9) Correction action requirements. Section 331.44 of this title (relating to Corrective Action Standards).

(10) Post-closure requirements. Section 331.68 of this title (relating to Post-Closure Standards).

Source: The provisions of this §305.154 adopted to be effective June 19, 1986, 11 TexReg 2598; amended to be effective July 5, 1989, 14 TexReg 3046.

§ 305.155. Production Area Authorization

A production area authorization shall include for each production area:

(1) a mine plan;

(2) a restoration table;

(3) a baseline water quality table;

(4) control parameters upper limits;

(5) monitor well locations; and

(6) any special provisions determined appropriate by the commission.

Source: The provisions of this §305.155 adopted to be effective June 19, 1986, 11 TexReg 2598.

§ 305.156. Hazardous Waste

For a hazardous waste disposal well, the surface facilities shall comply with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). The surface facilities for an injection well which disposes of hazardous waste are hazardous waste management facilities.

Source: The provisions of this §305.156 adopted to be effective June 19, 1986, 11 TexReg 2598.

Cross References: This Section cited in 30 TAC §331.9, (relating to Injection Authorized by Rule).

§ 305.157. Record Retention

The permittee shall retain all records concerning the nature and composition of injected fluids until five years after completion of plugging and aban-

~~donment procedures for the well. The executive~~ director may require a permittee to submit copies of the records at any time prior to conclusion of the retention period.

Source: The provisions of this §305.157 adopted to be effective June 19, 1986, 11 TexReg 2598.

§ 305.158. Additional Conditions

The commission shall impose any other condition necessary to prevent the pollution of fresh water.

Source: The provisions of this §305.158 adopted to be effective June 19, 1986, 11 TexReg 2598.

§ 305.159. Additional Class I Conditions

A permit for a Class I well shall include expressly or by reference the following conditions.

(1) A sign shall be posted at the well site which shall show the name of the company, company well number and commission permit number. The sign and identification shall be in the English language, clearly legible, and shall be in numbers and letters at least one inch high.

(2) An all-weather road shall be installed and maintained to allow access to the injection well and related facilities.

(3) The wellhead and associated facilities shall be painted, if appropriate, and maintained in good working order without leaks.

Source: The provisions of this §305.159 adopted to be effective ~~June 19, 1986, 11 TexReg 2598.~~

SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

§ 305.171. Determining Operational Readiness

For the purposes of determining operational readiness following completion of physical construction of a hazardous waste incinerator, the commission shall establish permit conditions including, but not limited to, specification of allowable waste feeds and operating conditions, in a permit for a new hazardous waste incinerator. These permit conditions will be effective for a minimum required time, not to exceed 720 hours operating time for treatment of hazardous waste, to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn. The commission may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension pursuant to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(1) Applicant must submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of 40 Code of Federal Regulations §284.343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in 40 Code of Federal Regulations §264.345.

(2) The executive director shall review this statement and any other relevant information submitted with Part B of the permit application and shall specify requirements for this period sufficient to meet the performance standards of 40 Code of Federal Regulations §264.343, based on the executive director's engineering judgment.

Source: The provisions of this §305.171 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 305.172. Determining Feasibility of Compliance and Adequate Operating Conditions

For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 and of determining adequate operating conditions under 40 CFR §264.345, the commission shall establish conditions in the permit for a new hazardous waste incinerator, to be effective during the trial burn.

(1) Applicant shall propose a trial burn plan, prepared under paragraph (2) of this section, with Part B of the permit application.

(2) The trial burn plan shall include the following information:

(A) an analysis of each waste or mixture of wastes to be burned which includes:

(i) heat value of the waste in the form and composition in which it will be burned;

(ii) viscosity (if applicable), or description of physical form of the waste;

(iii) an identification of any hazardous organic constituents listed in 40 CFR Part 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in

Part 261, Appendix VIII, which reasonably would not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for their exclusion established. The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent; and

(iv) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent;

(B) a detailed engineering description of the incinerator for which the permit is sought, including:

(i) manufacturer's name and model number of incinerator (if available);

(ii) type of incinerator;

(iii) linear dimensions of the incinerator unit, including the cross-sectional area of combustion chamber;

(iv) description of the auxiliary fuel system (type/feed);

(v) capacity of prime mover;

(vi) description of automatic waste feed cut-off system(s);

(vii) stack gas monitoring and pollution control equipment;

(viii) nozzle and burner design;

(ix) construction materials; and

(x) location and description of temperature, pressure, and flow indicating and control devices;

(C) a detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

(D) a detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the decision under paragraph (5) of this section;

(E) a detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator;

(F) a description of, and planned operating conditions for, any emission control equipment which will be used;

(G) procedures for rapidly stopping the waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction; and

(H) such other information as the executive director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (5) of this section.

(3) The executive director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section.

(4) Based on the waste analysis data in the trial burn plan, the commission shall specify as trial principal organic hazardous constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the commission based on an estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and for wastes listed in 40 CFR Part 261, Subpart D, the hazardous waste organic constituent or constituents identified in Appendix VII of that part as the basis for listing.

(5) The commission shall approve a trial burn plan if it finds that:

(A) the trial burn is likely to determine whether the incinerator performance standard required by 40 CFR §264.343 can be met;

(B) the trial burn itself will not present an imminent hazard to human health or safety or the environment;

(C) the trial burn will help the commission to determine the operating requirements to be specified (in the permit) according to 40 CFR §264.345; and

(D) the information sought in subparagraphs (A) and (C) of this paragraph cannot reasonably be developed through other means.

(6) During each approved trial burn (or as soon after the burn as practicable), the applicant must make the following determinations:

(A) a quantitative analysis of the trial POHCs in the waste feed to the incinerator;

(B) a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O_2), and hydrogen chloride (HCl);

(C) a quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;

(D) a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 CFR §264.343(a);

(E) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with 40 CFR §264.343(b);

(F) a computation of particulate emissions, in accordance with 40 CFR §264.343(c);

(G) an identification of sources of fugitive emissions and their means of control;

(H) a measurement of average, maximum, and minimum temperatures and combustion gas velocity;

(I) a continuous measurement of carbon monoxide (CO) in the exhaust gas; and

(J) such other information as the executive director may specify as necessary to ensure that the trial burn will determine the compliance with the performance standards in 40 CFR §264.343 and to establish the operating conditions required by 40 CFR §264.345 as necessary to meet those performance standards.

(7) The applicant must submit to the executive director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in paragraph (6) of this section. This submission shall be made within 90 days of completion of the trial burn, or later with the prior approval of the executive director.

(8) All data collected during any trial burn shall be submitted to the executive director immediately following the completion of the trial burn.

(9) All submissions required by this section shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports).

(10) Based on the results of the trial burn, the commission shall set the operating requirements in the final permit according to 40 CFR §264.345. The permit amendment or modification shall proceed according to §305.62 of this title (relating to Amendment) or §305.69(c) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

Source: The provisions of this §305.172 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective November 20, 1996, 21 TexReg 10982.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.174, (relating to Existing Incinerators).

§ 305.173. Operation Prior to Final Amendment of the Permit

For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final amendment of the permit conditions to reflect the trial burn results, the commission may establish permit conditions, including, but not limited to, allowable waste feeds and operating conditions sufficient to meet the requirements of 40 Code of Federal Regulations §264.345, in the permit for a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation, and submission of the trial burn results by the applicant, and amendment of the facility permit by the commission.

(1) Applicants shall submit a statement with Part B of the permit application which identifies the conditions necessary to operate in compliance with the performance standards of 40 Code of Federal Regulations §264.343, during the trial burn period. This statement shall include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in 40 Code of Federal Regulations §264.345.

(2) The executive director shall review this statement and any other relevant information

submitted with Part B of the permit application, and shall specify those requirements for this period most likely to meet the performance standards of 40 Code of Federal Regulations §264.343, based on the executive director's engineering judgment.

Source: The provisions of this §305.173 adopted to be effective June 19, 1986, 11 TexReg 2600.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 305.174. Existing Incinerators

For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 and of determining adequate operating conditions under 40 CFR §264.345, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with 40 CFR §270.19(b) and §305.172(2)-(9) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) or, instead, submit other information as specified in 40 CFR §270.19(c). Applicants submitting information specified in 40 CFR §270.19(a) are exempt from compliance with 40 CFR §264.343 and §264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in §305.172 of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the executive director to establish a later date for submission of the Part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the executive director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

Source: The provisions of this §305.174 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

Subchapter J. PERMITS FOR LAND TREATMENT DEMONSTRATIONS USING FIELD TESTS OR LABORATORY ANALYSES

§ 305.181. Treatment Demonstration Permit

For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of 40 Code of Federal Regulations §264.272, the commission may issue a treatment demonstration permit. The permit shall contain only those requirements necessary to meet the standards in 40 Code of Federal Regulations §264.272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two phase facility permit covering the field tests or laboratory analyses, and the design, construction, operation, and maintenance of the land treatment unit.

(1) The commission may issue a two-phase facility permit if it finds that, based on information submitted in Part B of the application, substantial information, although incomplete or inconclusive, already exists upon which to base the issuance of a facility permit.

(2) If the commission finds that insufficient information exists upon which to establish permit conditions to attempt to provide for compliance with all of the requirements relating to land treatment, the commission may issue a treatment demonstration permit covering only the field test or laboratory analyses.

Source: The provisions of this §305.181 adopted to be effective June 19, 1986, 11 TexReg 2600.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 305.182. Two-Phase Facility Permit

If the commission finds that a phased permit may be issued, the commission shall establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions shall include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the commission finds may be necessary under 40 Code of Federal Regulations §264.272(c). The commission shall include conditions in the second phase of the facility per-

mit to attempt to meet all requirements pertaining to unit design, construction, operation, and maintenance of land treatment facilities. The commission shall establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(1) The first phase of the permit shall be effective as provided in Texas Civil Statutes, Article 6252-13, and the rules of the commission.

(2) The second phase of the permit shall be effective as provided in §305. 184 of this title (relating to Permit Amendment).

Source: The provisions of this §305.182 adopted to be effective June 19, 1986, 11 TexReg 2600.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 305.183. Certification

When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he shall submit to the executive director a certification, signed by a person authorized to sign a permit application or report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports), that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the executive director approves a later date.

Source: The provisions of this §305.183 adopted to be effective June 19, 1986, 11 TexReg 2600.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 305.184. Permit Amendment or Modification

If the commission determines that the results of the field tests or laboratory analyses meet the requirements of 40 Code of Federal Regulations §264.272, it shall amend the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with requirements applicable to land treatment, based upon the results of the field tests or laboratory analyses.

(1) This permit amendment may proceed under §305.62 of this title (relating to Amendment) or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), provided any such change is minor, or otherwise will proceed as an amendment under §305.62(d) of this title (relating to Amendment). If such modifications or amendments are necessary, the second phase of the permit will become effective only after those modifications or amendments have been made.

(2) If not amendments of the second phase of the permit are not necessary, the commission shall give notice in accordance with §305.96(b) of this title (relating to Action on Application for Amendment or Modification). The second phase of the permit then will become effective as specified in Texas Civil Statutes, Article 6252-13, and the rules of the commission.

Source: The provisions of this §305.184 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

Subchapter K. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS

Cross References: This Subchapter cited in 30 TAC §335.1, (relating to Definitions).

§ 305.191. Applicability and Scope

The commission may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 40 Code of Federal Regulations Parts 264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health or safety and the environment. Such permits:

(1) shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in §305.194 of this title (relating to Renewal);

(2) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the commission deems necessary for purposes of determining the effica-

cy and performance capabilities of the technology or process and the effects of such technology or process on human health and safety and the environment; and

(3) shall include such requirements as the commission deems necessary to protect human health and safety and the environment, including, but not limited to, requirements regarding monitoring, operation, financial responsibility closure, and remedial action, and such other requirements as the commission deems necessary regarding testing with respect to the operation of the facility and providing of information to the executive director.

Source: The provisions of this §305.191 adopted to be effective June 19, 1986, 11 TexReg 2601.

§ 305.192. Waiver of Requirements

For the purpose of expediting review and issuance of permits under this subchapter, the commission may, consistent with the protection of human health and safety and the environment, modify or waive permit application and permit issuance requirements of this chapter, except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

Source: The provisions of this §305.192 adopted to be effective June 19, 1986, 11 TexReg 2601; amended to be effective August 30, 1988, 13 TexReg 4071.

§ 305.193. Termination

The commission may order an immediate termination of all operations at a facility subject to this subchapter at any time the commission determines that termination is necessary to protect human health and safety and the environment.

Source: The provisions of this §305.193 adopted to be effective June 19, 1986, 11 TexReg 2601.

§ 305.194. Renewal

Any permit issued under this subchapter may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

Source: The provisions of this §305.194 adopted to be effective June 19, 1986, 11 TexReg 2601.

Cross References: This Section cited in 30 TAC §305.191, (relating to Applicability and Scope).

Subchapter L. GROUNDWATER COMPLIANCE PLAN

§ 305.401. Compliance Plan

~~(a) In order to administer the groundwater protection requirements relating to compliance monitoring and corrective action for facilities that store~~, process, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills, and the requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), the commission shall establish a compliance plan.

(b) The following rules pertaining to application and notice an hearing shall be applicable in proceedings to establish the plan: Chapter 281 of this title (relating to Applications Processing), §305.44 of this title (relating to Signatories to Applications), §305.47 of this title (relating to Retention of Application Data), §305.43 of this title (relating to Who Applies), §305.53 of this title (relating to Application Fees), §305.50 of this title (relating to Additional Requirements for an Application for a Solid Waste Permit), §305.92 of this title (relating to Action on Applications), § 305.93 of this title (relating to Action on Application for Permits), §305. 96 of this title (relating to Action on Application for Amendment), §§ 305.98-305.105 of this title (relating to Scope of Proceedings; Commission Action; Notice of Commission Consideration of Application; Notice of Hearing; Notice by Publication; Notice by Mail; Radio Broadcasts; and Request for Public Hearing), §§305.122-305.124 of this title (relating to Characteristics of Permits; Reservation in Granting Permit; and Acceptance of Permit, Effect); and §305.128 of this title (relating to ~~Signatories to Reports~~).

(c) Any investigation report to establish compliance monitoring or corrective action shall contain the information specified in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(7) and (8), which are in effect as of September 9, 1987. The executive director may authorize, in writing, in advance the submittal of a proposed permit schedule for the submittal of an engineering feasibility plan as set forth in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(7), which are in effect as of September 9, 1987. The executive director may also authorize, in writing, prior to the submittal of a complete permit application, the submittal of a schedule for the information required in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(8)(iii) and (iv), as set forth in the regulations contained in 40 Code of Federal Regulations, §.270.14(c) (8)(v), which are in effect as of September 9, 1987. The executive director may request information necessary to determine the appropriateness and extent of corrective action required by

§335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

~~(d) The executive director shall prepare a draft~~ compliance plan unless the executive director recommends not to approve the plan. The draft compliance plan shall be available for public review, and notice that the executive director has prepared such a plan will be given pursuant to §305.100 of this title (relating to Notice of Application). The draft compliance plan shall be filed with the commission to be included in its consideration of the approval of a compliance plan.

(e) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft compliance plan. The executive director shall send this summary together with the draft compliance plan to the applicant and, on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft compliance plan;

(2) the type and quantity of wastes, fluids, or pollutants which are being managed at the facility;

(3) a brief summary of the basis for the conditions of the draft compliance plan, including references to applicable statutory or regulatory provisions;

(4) a description of the procedures for reaching a final decision on the draft compliance plan, including procedures whereby the public may participate in the final decision; and

(5) the name and telephone number of a person in the commission to contact for additional information.

(f) The plan may be amended:

(1) when the corrective action program specified in the plan under §335.165 of this title (relating to Compliance Monitoring Program) has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable time;

(2) When the plan requires a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program), but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard. ~~The sections of this chapter pertaining to major amendments shall be applicable to the foregoing amendments~~ to the compliance plan.

(g) Whenever a facility is subject to permitting under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is further required under §§335.156-335.167 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; Corrective Action Program; and Corrective Action for Solid Waste Management Units) to conduct compliance monitoring or corrective action, processing of the permit application for the facility and the establishment of the compliance plan shall be consolidated in one proceeding.

(h) Nothing herein shall be construed to be inconsistent with the commission's authority under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §8 and §8b.

Source: The provisions of this §305.401 adopted to be effective June 19, 1986, 11 TexReg 2601; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3514.

Cross References: This Section cited in 30 TAC §281.2, (relating to Applicability); 30 TAC §335.167, (relating to Corrective Action for Solid Waste Management Units).

SUBCHAPTER M. WASTE TREATMENT INSPECTION FEE PROGRAM

§ 305.501. Purpose

(a) It is the purpose of these sections to maintain the Waste Treatment Fee Program. Under this program, an annual fee is imposed on each permittee holding a permit or otherwise authorized to treat or discharge wastewater under the Texas Water Code, Chapter 26. All fees shall be deposited in a fund for the purpose of supplementing other funds appropriated by the legislature to pay the expenses of the commission in inspecting waste treatment facilities and enforcing the provisions of the Texas Water Code, Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities.

(b) Upon the delegation of national pollutant discharge elimination system (NPDES) permit authority to the commission, the fees shall be used, in addition to the purposes specified in subsection (a) ~~of this section for obtaining and administering the~~

~~Texas pollutant discharge elimination system~~ (TPDES) program.

Source: The provisions of this §305.501 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective December 30, 1991, 16 TexReg 7206; amended to be effective February 14, 1994, 19 TexReg 800.

Cross References: This Section cited in 30 TAC §305.505, (relating to Fund).

§ 305.502. Definitions and Abbreviations

(a) Definitions. The definitions contained in the Texas Water Code, §26.001, shall apply herein. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual waste treatment fee—A fee charged to each permittee holding a permit or otherwise authorized to treat or discharge wastewater under the Texas Water Code, Chapter 26.

(2) Biomonitoring—The determination of total (whole-effluent) toxicity of permitted discharges as required by and consistent with the provisions of §307.1(d) of this title (relating to General Policy Statement).

(3) Commission—The Texas Natural Resource Conservation Commission.

(4) Flow limit—The maximum amount of wastewater discharge authorized during any term of the permit, expressed as a daily average flow, a daily maximum flow, an annual average, or an annual maximum.

(5) Flow—The total by volume of all wastewater discharges authorized under a permit expressed as an average flow per day, a maximum flow per day, an annual average, or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow is based on the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow is based on the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(6) Flow volume—

(A) Type I—These wastewaters include sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters;

(B) Type II—These wastewaters include non-contact cooling water or mixed flows which ~~contain at least 90% non-contact cooling water and not more than one million gallons per day~~ of process wastewater.

(7) Fund—The water quality fund.

(8) Heat load parameter—The temperature limitation specified in a permit. For purposes of assessing the waste treatment fee, points are assigned according to the existence of a temperature limitation within a waste discharge permit.

(9) Inactive permit—A permit which authorizes a waste treatment facility, but where the facility itself is not yet operational or where operation has been suspended.

(10) Land application/evaporation permit—A permit which does not authorize the discharge of wastewaters into surface waters in the state. These permits include but are not limited to permits for evaporation ponds and irrigation systems.

(11) Major permit—A permit designated as a major permit, in conformance with applicable Environmental Protection Agency (EPA) guidance documents, by either EPA or the commission and subject to provisions of NPDES or TPDES permit authority, respectively.

(12) Parameter—A variable which defines a set of physical properties whose values determine the characteristics of a waste discharge. Those parameters to be considered under the waste treatment facility fee are:

(A) pollutant potential;

(B) flow volume;

(C) biochemical oxygen demand (BOD)/chemical oxygen demand (COD)/total organic carbon value;

(D) total suspended solids (TSS) value;

(E) ammonia value;

(F) heat load; and

(G) major/minor designation.

(13) Payment—Receipt by the commission of the full amount of the annual waste treatment fee.

(14) Permit—Any permit issued by the Texas Natural Resource Conservation Commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this subchapter, the term "permit" ~~shall include any other authorization for the~~

~~treatment or discharge of wastewater, including~~ permits by rule.

(15) Pollutant potential—A rating assigned to a permit based on:

(A) for industrial permits, the source(s) of wastewater, the Standard Industrial Classification of the facility, and the specific type of operation; or

(B) for domestic permits, an authorized flow of greater than 1.0 mgd and/or the existence of biomonitoring requirements or toxic numerical discharge limits.

(16) Report only permit—A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported but without any limitation on the volume of discharge.

(17) Stormwater outfall or permit—A permit or outfall(s) which authorizes the variable or occasional discharge of accumulated stormwater and stormwater runoff, but without any specific limitation on the volume of discharge.

(18) Toxicant numerical limit—A permit discharge limit established for any toxicant identified or otherwise defined in accordance with the provisions of §307.6 of this title (relating to Toxic Materials).

(19) Traditional pollutants—The wastewater parameters typically found in wastewater discharge permits, specifically BOD/COD/TOC, TSS, and ammonia. For purposes of assessing the waste treatment fee, points are assigned to these parameters if they are included in a permit.

(b) Abbreviations. The following abbreviations apply to these sections.

(1) BOD—Biochemical oxygen demand.

(2) COD—Chemical oxygen demand.

(3) mgd—Million gallons per day.

(4) Mg/l (milligrams per liter)—All limits measured in mg/l are converted to pounds per day (lb/day) using the following conversion: mg/l multiplied by the flow volume in MGD multiplied by 8.34 equals lb/day.

(5) SIC—Standard Industrial Classification(s) assigned to a facility generating wastewater.

(6) TNL—Toxicant numerical limit.

(7) TOC—Total organic carbon.

(8) TSS—Total suspended solids.

Source: The provisions of this §305.502 adopted to be effective ~~April 27, 1988, 13 TexReg 1775; amended to be effective Decem-~~ ~~ber 30, 1991, 16 TexReg 7206; amended to be effective February~~ 14, 1994, 19 TexReg 800.

§ 305.503. Fee Assessment

(a) An annual waste treatment fee is assessed against each person holding a permit or other authorization issued under the authority of the Water Code, Chapter 26. The amount of the fee is determined by specific permit parameters for which a facility is authorized as of each September 1. The maximum fee which may be assessed each permit is $11,000, except that for Texas Pollutant Discharge Elimination Systems (TPDES) permits, the maximum fee which may be assessed is $25,000.

(b) In assessing a fee, the commission may consider the following parameters for each permit:

(1) pollutant potential;

(2) flow volume;

(3) traditional pollutants;

(4) heat load;

(5) major/minor designation;

(6) the designated uses and ranking classification of waters affected by waste discharges; and

(7) the costs of obtaining and administering the Texas pollutant discharge elimination system program, upon delegation by the Environmental Protection Agency (EPA).

(c) Except as provided in subsections (g) and (j) of this section, the commission shall assign a point value to each of the permit parameters in subsection (b) of this section. The assigned value(s) shall be weighted according to the specific permit limits and the weighted values summed. The sum of the variable point values under subsection (f) of this section and the set values established under subsection (g) of this section are multiplied by the current fee rate under subsection (h) of this section to determine the fee to be assessed.

(d) For the purpose of fee calculation, COD and TOC are converted to BOD values and the higher value is assessed points. The conversion for TOC is: three pounds of TOC is equal to one pound of BOD (3:1). The conversion for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(e) For the purpose of fee calculation, a permit which authorizes a secondary treatment system consisting of ponds or lagoons at limits of 30 mg/l BOD and 90 mg/l TSS shall be assumed to be ~~equivalent to 20 mg/l BOD and 20 mg/l TSS. This~~

equivalency is based on treatment provided by different types of secondary treatment systems.

(f) Fee rate schedule. Except as provided in subsection (g) of this section, each permit shall be assessed a fee based on the specific parameters assigned to the permit and determined by the following schedule. Each permit shall be reviewed to determine the individual values for the parameters covered by this schedule.

(1) Pollutant potential.

(A) Industrial discharges.

Group I	=	2 Points
Group II	=	10 Points
Group III	=	15 Points
Group IV	=	20 Points
Group V	=	30 Points
Group VI	=	40 Points

(B) Domestic discharges.

Group I (< 1.0 mgd, no biomonitoring or toxicant numerical limit) = 2 Points

Group II (≥ 1 mgd and/or biomonitoring, but no toxicant numerical limit) = 10 Points

Group III (toxicant numerical limit) = 15 Points

(C) Evaporation/land application permits with a toxic rating of I will be assessed only one point for pollutant potential.

Pollutant Potential Points = _____

(2) Flow volume.

(A) Type I:

≤.05 mgd	=	4 Points
>.05 but ≤.25	=	7 Points
>.25 but ≤2	=	14 Points
>2 but ≤4	=	28 Points
>4 but ≤6	=	46 Points
>6	=	72 Points

(B) Type II:

≤ 1 mgd	=	3 points
> 1 but ≤ 5	=	10 points
> 5 but ≤ 10	=	20 points
> 10 but ≤ 50	=	30 points
> 50 but ≤ 500	=	40 points
> 500 mgd	=	50 points

Flow Volume Points = _____

(3) Traditional pollutants.

(A) Oxygen demand. (COD and TOC limits are converted to BOD values and the higher value is used.)

≤ 50 lb/day	=	1 point
> 50 but ≤ 100	=	5 points
> 100 but ≤ 250	=	10 points
> 250 but ≤ 500	=	20 points
> 500 but ≤ 750	=	30 points
> 750 but ≤ 1000	=	40 points
> 1000 but ≤ 3000	=	60 points
> 3000 lb/day	=	80 points

Oxygen Demand Points = _____

(B) Total suspended solids.

≤ 50 lb/day	=	1 point
> 50 but ≤ 100	=	5 points
> 100 but ≤ 250	=	10 points
> 250 but ≤ 500	=	20 points
> 500 but ≤ 750	=	30 points
> 750 but ≤ 1000	=	40 points
> 1000 but ≤ 3000	=	60 points
> 3000 lb/day	=	80 points

Total Suspended Solids Points = _____

(C) Ammonia.

≤ 250 lb/day	=	0 points
> 250 but ≤ 500	=	10 points
> 500 but ≤ 1000	=	20 points
> 1000 but ≤ 3000	=	30 points
> 3000 lb/day	=	40 points

Ammonia Points = _____

(4) Heat Load.

If heat loading parameter is not present = 0 points

If heat loading parameter is present = 10 points

Heat Load Points = _____

(5) Major/Minor designation.

EPA minor facility = 0 points

EPA major facility = 10 points

Major Facility Points = _____

(g) Set point permits. The following fees are assessed for permits to which the parameters under subsection (f) of this section are not applicable.

(1) Evaporation/land application permits.

Industrial Discharges = 5 points

Domestic Discharges

<.1 mgd = 4 points

≥.1 mgd = 10 points

Set Points = _____

(2) Report only or stormwater outfall(s) and permits—12 points. Stormwater permit outfalls for which flow discharge parameters have been established shall be assessed a fee under subsection (f) of this section. Set points = ____.

(h) The annual fee to be assessed is calculated by multiplying the total points determined under subsections (f) and (g) of this section by the rate of $75 per point. Permits having both process wastewater discharges assessed under subsection (f) of this section and stormwater discharges assessed under subsection (g) of this section shall be assessed the total of the fees determined under the respective

~~subsections, not to exceed the maximum fee under~~ subsection (a) of this section.

(i) The fee assessed an inactive permit shall be 50% of that calculated under subsection (f) and subsection (g) of this section. In no event shall the fee for an inactive permit be less than $150 per year.

(j) Upon delegation of the National Pollutant Discharge Elimination System, a fee shall be determined by multiplying the base fee provided by subsection (c) of this section by a factor not to exceed 2.3. The minimum fee shall not be less than $150 more than the pre-existing fee. This subsection shall not apply to domestic wastewater treatment facilities or confined/concentrated animal feeding operations until August 31, 1999.

Source: The provisions of this §305.503 adopted to be effective December 30, 1991, 16 TexReg 7206; amended to be effective February 14, 1994, 19 TexReg 800; amended to be effective June 9, 1996, 21 TexReg 4799.

Cross References: This Section cited in 30 TAC §321.34, (relating to Procedures for Making Application for a Permit); 30 TAC §321.184, (relating to Application Requirements).

§ 305.504. Fee Payment

Annual waste treatment fees are payable within 30 days of the billing date each year for all permittees. Fees shall be paid by check, certified check, or money order payable to the Texas Natural Resource Conservation Commission. New permits will require full payment of the appropriate fee within 30 days of the billing date, and thereafter will be assessed an annual waste treatment fee under the schedule set forth herein, beginning with the next regular billing date. All fee assessments are to be based on the permitted parameters (interim or final) specified in the permit, without regard to the actual quality of effluent that the permitted facility is discharging. Where the parameters authorized for a permitted facility change to a higher interim level or to the final level authorized by the permit, the revised fee, if any, will be assessed at the next regular payment date following the change in authorized limits. If a permit is amended to authorize lesser or greater parameters, the revised fee will be assessed at the next regular payment date following the final order of the Texas Natural Resource Conservation Commission effecting the amendment. Fees are payable regardless of whether the permitted facility actually is constructed or in operation.

Source: The provisions of this §305.504 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective December 30, 1991, 16 TexReg 7206; amended to be effective February 14, 1994, 19 TexReg 800.

§ 305.505. Fund

All fees collected under this waste treatment fee program are to be deposited in the water quality fund. The fund shall be managed in accordance with §305.501 of this title (relating to Purpose).

Source: The provisions of this §305.505 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective February 14, 1994, 19 TexReg 800.

§ 305.506. Cancellation, Revocation, and Transfer

Cancellation or revocation of a permit, whether by voluntary action on the part of the permittee or as a result of involuntary proceedings initiated by the commission, will not constitute grounds for a refund, in whole or in part, of any fee already paid by the permittee. Transfer of a permit will not entitle the transferor permittee to a refund, in whole or in part, of any fee already paid by that permittee. Any permittee to whom a permit is transferred shall be liable for payment of the annual fee assessed for the permitted facility on the same basis as the transferor of the permit.

Source: The provisions of this §305.506 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective February 14, 1994, 19 TexReg 800.

§ 305.507. Failure To Make Payment

(a) Failure to make payment in accordance with this subchapter constitutes a violation subject to enforcement pursuant to the provisions of the Water Code, §26.123.

(b) Owners or operators of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed a penalty of 5.0% of the amount due; and, if the fees are not paid within 30 days after the day on which the fees are due, an additional 5.0% penalty shall be imposed. An annual interest rate of 12% compounded monthly, shall be imposed on delinquent fees beginning 60 days from the date on which the fee is due.

(c) Interest or penalties collected by the commission under this section shall be deposited to the water quality fund.

Source: The provisions of this §305.507 adopted to be effective February 14, 1994, 19 TexReg 800.

~~Subchapter N. MEMORANDUM OF UNDERSTANDING~~

Authority: The provisions of this Subchapter N issued under the Texas Water Code, §5.104.

§ 305.521. Adoption of Memoranda of Understanding by Reference

The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Legal Division, P.O Box 13087, Austin, Texas 78711-3087, (512) 239-0600:

(1) the memorandum of understanding (effective April 1, 1989) between the Texas Department of Health, the Texas Air Control Board, and the Texas Water Commission, which concerns the regulation and management of municipal sewage sludge;

(2) the memorandum of understanding between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of non-hazardous wastewater that contains radioactive constituents;

(3) the memorandum of understanding (effective February 1992) between the Texas Department of Transportation and the Texas Water Commission, which concerns primarily the assessment of water quality impacts resulting from certain transportation projects; and

(4) the memorandum of understanding (effective August 16, 1995) between the Texas General Land Office and the Texas Natural Resource Conservation Commission, which concerns the joint administration and implementation of the Galveston Bay Program.

Source: The provisions of this §305.521 adopted to be effective July 3, 1989, 14 TexReg 3008; amended to be effective December 24, 1992, 17 TexReg 8735; amended to be effective December 25, 1995, 20 TexReg 10374.

SUBCHAPTER O. ADDITIONAL CONDITIONS AND PROCEDURES FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS

§ 305.531. Establishing and Calculating Additional Conditions and Limitations for TPDES Permits

The following regulations contained in 40 Code of Federal Regulations, Part 122, Subpart C, Permit Conditions, and Part 124, Subpart D, Specific Procedures Applicable to Texas Pollutant Discharge Elimination System (TPDES) Permits, ~~which are in effect as of the date TPDES program authorization, as amended, are adopted by reference~~.

(1) §122.41(a)(1)—Conditions applicable to all permits. Section 122.41(a)(1) relates to the duty of a permittee to comply with standards or prohibitions for toxic pollutants and sewage sludge use and disposal established under Clean Water Act (CWA), §307(a) and §405(d).

(2) §122.42—Additional conditions applicable to specified categories of NPDES permits. Section 122.42 provides additional conditions for existing manufacturing, commercial, mining, and silvicultural dischargers, and for publicly owned treatment works (POTWs).

(3) §122.43(a) and (b)—Establishing permit conditions. Section 122.43 relates to conditions assuring compliance with all applicable requirements of the CWA and regulations.

(4) §122.44—Establishing limitations, standards, and other permit conditions applicable to state NPDES programs. Section 122.44 relates to technology-based effluent limitations and standards, other effluent limitations and standards, reopener clauses, water quality standards and state requirements, toxic pollutants, notification levels, 24-hour reporting, durations for permits, monitoring requirements, pretreatment programs for POTWs, best management practices, reissued permits, privately owned treatment works, grants, sewage sludge, Coast Guard, and navigation.

(5) §122.45—Calculating NPDES permit conditions. Section 122.45 relates to outfalls and discharge points, production-based limitations, metals, continuous discharges, noncontinuous discharges, mass limitations, pollutants in intake water, internal waste streams, and disposal of pollutants in intake water, internal waste streams, and disposal of pollutants into wells, into POTWs, or by land application.

(6) §122.50—Disposal of pollutants into wells, into POTWs, or by land application.

(7) §124.59—Conditions requested by the United States Army Corps of Engineers and other government agencies.

Source: The provisions of this §305.531 adopted to be effective October 8, 1990, 15 TexReg 5492.

§ 305.532. Adoption of Appendices by Reference

The following appendices contained in 40 Code ~~of Federal Regulations, Part 122, which are in~~

~~effect as of the date of Texas pollutant discharge~~ elimination system (TPDES) program authorization, as amended, are adopted by reference and apply only to TPDES permits:

(1) Appendix A—NPDES Primary Industry Categories;

(2) Appendix B—Criteria for Determining a Concentrated Animal Feeding Operation;

(3) Appendix C—Criteria for Determining a Concentrated Aquatic Animal Production Facility;

(4) Appendix D—NPDES Permit Application Testing Requirements.

Source: The provisions of this §305.532 adopted to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.2, (relating to Definitions).

§ 305.533. Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs

On the date of TNRCC assumption of the administration of the Texas Pollutant Discharge Elimination System (TPDES) permit program, after the Environmental Protection Agency (EPA) approves the TPDES permit program, and issuance of national pollutant discharge elimination system (NPDES) permits is delegated from the EPA to the state, the state adopts all EPA permits and pretreatment programs. This provision does not affect the right of the EPA to issue NPDES permits for facilities which expired in fiscal year 1996 or to modify NPDES permits under Clean Water Act, §304(*l*). If the requirements of a state permit and an EPA permit issued to the same permittee or for the same facility are not of equal stringency, the more stringent requirements shall apply.

Source: The provisions of this §305.533 adopted to be effective October 8, 1990, 15 TexReg 5492; amended to be effective June 9, 1996, 21 TexReg 4800.

§ 305.534. New Sources and New Dischargers

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Existing source—Any source which is not a new source or a new discharger.

(2) Facilities or equipment—Buildings, structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if ~~these facilities or equipment are of such value as~~ to represent a substantial commitment to construct. These terms exclude facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(3) New source, new discharger, and site—See §305.2 of this title (relating to Definitions).

(4) Source—Any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(b) Criteria for new source determination.

(1) Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in §305.2 of this title (relating to Definitions) and:

(A) it is constructed at a site at which no other source is located; or

(B) it totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(C) its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the director shall consider such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of paragraph (1) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

(3) Construction on a site at which an existing source is located results in an amendment subject to §305.62 of this title (relating to Amendments) rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (1)(B) or (C) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under §305.2 of this title (relating to Definitions) has commenced if the owner or operator has:

(A) begun, or caused to begin as part of a ~~continuous on-site construction program:~~

~~(i) any placement, assembly, or installation~~ of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(B) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under this paragraph.

(c) Effect of compliance with new source performance standards. The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.

(1) Except as provided in paragraph (2) of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under the Clean Water Act (CWA), §301(b)(2), for the soonest ending of the following periods:

(A) 10 years from the date that construction is completed;

(B) 10 years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(C) the period of depreciation or amortization of the facility for the purposes of the Internal Revenue Code of 1954, §167 or §169 (or both).

(2) The protection from more stringent standards of performance afforded by paragraph (1) of this subsection does not apply to:

(A) additional or more stringent permit conditions which are not technology-based; for ~~example, conditions based on water quality standards, or toxic effluent standards or prohi~~bitions under CWA, §307(a); or

(B) additional permit conditions in accordance with 40 Code of Federal Regulation (CFR) §125.3, adopted by §308.1 of this title (relating to Criteria and Standard for Imposing Technology-Based Treatment Requirements) controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When a Texas pollutant discharge elimination system (TPDES) permit issued to a source with a protection period under paragraph (1) of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of CWA, §301, and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 40 CFR §122.47(a)(2).

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

Source: The provisions of this §305.534 adopted to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.126, (relating to Additional Standard Permit Conditions for Waste Discharge Permits).

§ 305.535. Bypasses from TPDES Permitted Facilities

(a) Authorized bypass. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (b) and (c) of this section.

(b) Notice.

(1) Anticipated bypass. In accordance with the procedures described in §305.21 and §305.23 of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) if the permittee knows in advance of the need for a bypass, it shall submit prior notice.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in §305.125(9) of this title (relating to Standards Permit Conditions (24-hour notice)).

(c) Prohibition of bypass.

(1) Bypass is prohibited, and the commission may take enforcement action against the permittee for bypass, unless:

(A) bypass was unavoidable to prevent loss of life, personal injury, severe property damage, severe economic loss (except economic loss due to delays in production), or to make necessary and unforeseen repairs to a facility;

(B) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) the permittee submitted notices as required under subsection (b) of this section.

(2) The commission may approve an anticipated bypass in accordance with the procedures described in §305.21 and §305.23 of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) after considering its adverse effects, if the executive director determines that it will meet the three conditions listed in paragraph (1) of this subsection.

Source: The provisions of this §305.535 adopted to be effective October 8, 1990, 15 TexReg 5492.

§ 305.536. Requirements for Applications and Permits with Sludge Related Conditions

(a) Sludge standards. The permittee shall comply with standards for sewage sludge use or disposal established under the Clean Water Act, §405(d) (40 Code of Federal Regulations (CFR), Part 503) within the time provided in the regulations that establish such standards, even if the permit has not yet been modified to incorporate the standards.

(b) Additional contents of applications. In addition to all other requirements for information described in §305.48 of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits), all treatment works treating domestic sewage shall submit to the executive director within the time frames established in subsection (c) of this section the information described in 40 CFR §501.15(a)(2)(viii)-(xii), as amended.

(c) Time frames for applications.

(1) Any publicly owned treatment works (POTW) with a currently effective Texas pollutant discharge elimination system (TPDES) permit shall submit the application information required by this subsection when its next application for TPDES permit renewal is due or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to POTWs' sludge use or disposal practices, whichever occurs first.

(2) Any other existing treatment works treating domestic sewage not covered under subsection (c)(1) of this section shall submit an application to the executive director within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practices or upon request of the executive director prior to the promulgation of an applicable standard for sewage sludge use or disposal if the executive director determines that a permit is necessary to protect public health and the environment from any adverse effect that may occur from toxic pollutants in sewage sludge.

(3) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the executive director at least 180 days

~~prior to the date proposed for commencing operations.~~

(d) Fact sheets. A fact sheet shall be prepared for every draft permit described in 40 CFR §501.15(d)(4), as amended. The executive director shall send this fact sheet to the applicant and, on request, to any other person. The fact sheet shall include the information required by 40 CFR §501.15(d)(4) as amended.

Source: The provisions of this §305.536 adopted to be effective October 8, 1990, 15 TexReg 5492.

§ 305.537. Reporting Requirements for Planned Physical Changes to a Permitted Facility

Except to the extent that it is less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations §122.41(*l*)(1), which is in effect as of the date of Texas pollutant discharge elimination system (TPDES) program authorization, as amended, is adopted by reference.

Source: The provisions of this §305.537 adopted to be effective October 8, 1990, 15 TexReg 5492.

§ 305.538. Prohibitions for TPDES Permits

No permit may be issued under the conditions prohibited in 40 Code of Federal Regulations §122.4, as amended.

Source: The provisions of this §306.538 adopted to be effective October 8, 1990, 15 TexReg 5492.

Subchapter P. EFFLUENT GUIDELINES AND STANDARDS FOR TPDES PERMITS

§ 305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits

Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations, Subchapter N, parts 400-471, except 40 Code of Federal Regulations, Part 403, which are in effect as of the date of Texas Pollutant Discharge Elimination System (TPDES) program authorization, as amended, are adopted by reference.

Source: The provisions of this §305.541 adopted to be effective ~~October 8, 1990, 15 TexReg 5492.~~

SUBCHAPTER Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

Authority: The provisions of this Subchapter Q issued under the Texas Water Code, §§5.103, 5.105, and 26.011; and the Solid Waste Disposal Act, §3 and §4.

§ 305.571. Applicability

Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 Code of Federal Regulations (CFR) §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners)) are subject to §305.572 of this title (relating to Permit and Trial Burn Requirements). Owners and operators of existing boilers and industrial furnaces operating under the interim status standards of 40 CFR §266.103 and §335.224 of this title are subject to §305.573 of this title (relating to Interim Status and Trial Burn Requirements).

Source: The provisions of this §305.571 adopted to be effective July 29, 1992, 17 TexReg 5016.

§ 305.572. Permit and Trial Burn Requirements

The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through June 1, 1990 (see 55 FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, ~~September 5, 1991~~, and August 31, 1993, issues of the Federal Register (see 56 FedReg 7239, 32688, 42504, and 43874, and 58 FedReg 46040):

(1) §270.66(b)—Permit Operating Periods for New Boilers and Industrial Furnaces, except that any permit amendment or modification shall proceed according to the applicable requirements of Subchapter D of this chapter (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) §270.66(c)—Requirements for Trial Burn Plans;

(3) §270.66(d)—Trial Burn Procedures, except that all required submissions must be certified on behalf of the applicant by the signature of a person authorized pursuant to §305.44 of this title (relating to Signatories to Applications);

(4) §270.66(e)—Special Procedures for DRE Trial Burns; and

(5) §270.66(f)—Determinations Based on Trial Burn.

Source: The provisions of this §305.572 adopted to be effective July 29, 1992, 17 TexReg 5016; amended to be effective November 20, 1996, 21 TexReg 10982.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.571, (relating to Applicability); 30 TAC §305.573, (relating to Interim Status and Trial Burn Requirements).

§ 305.573. Interim Status and Trial Burn Requirements

(a) For the purpose of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §§266.104-266.107 and of determining adequate operating conditions under 40 CFR §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners), applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of 40 CFR §266.103 and §335.224 of this title must either prepare and submit a trial burn plan for approval by the executive director and perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR §270.22(a)(6). Applicants who submit a trial burn plan and receive approval before submission of the Part B permit application must complete the trial burn and submit the results specified in 40 CFR §270.66(f) with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the executive director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn for approval by the executive director with Part B of the permit application, the approved trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the executive director.

(b) Owners and operators who have obtained approval of trial burn plans pursuant to 40 CFR §270.66 prior to the effective date of this section may request executive director approval of the trial burn plan and the executive director may approve the trial burn plan, whether or not the trial burn has been conducted. If the executive director does not approve the trial burn plan, then the owner or operator must prepare and submit a trial burn plan and receive approval from the executive director, and then perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR §270.22(a)(6).

Source: The provisions of this §305.573 adopted to be effective July 29, 1992, 17 TexReg 5016.

Cross References: This Section cited in 30 TAC §305.571, (relating to Applicability).

CHAPTER 307. TEXAS SURFACE WATER QUALITY STANDARDS

Section

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Authority: The provisions of this Chapter 307 issued under the Texas Water Code, §5.103 and §26.023.

Cross References: This Chapter cited in 30 TAC §279.3, (relating to Definitions); 30 TAC §281.42, (relating to Definitions); 30 TAC §305.127, (relating to Conditions To Be Determined for Individual Permits); 30 TAC §330.2, (relating to Definitions); 30 TAC §334.203, (relating to Risk-Based Criteria for Establishing Target Concentrations); 30 TAC §335.559, (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2); 30 TAC §335.563, (relating to Media Cleanup Requirements for Risk Reduction Standard Number 3).

§ 307.1. General Policy Statement

It is the policy of this state and the purpose of this chapter to maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state; to encourage and promote development and use of regional and areawide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

Source: The provisions of this §307.1 adopted to be effective April 29, 1988, 13 TexReg 1784.

Cross References: This Section cited in 30 TAC §305.502, (relating to Definitions and Abbreviations); 30 TAC §307.2, (relating to Description of Standards); 30 TAC §307.4, (relating to General Criteria).

§ 307.2. Description of Standards

(a) Contents of the Texas Surface Water Quality Standards.

(1) Section 307.1 of this title (relating to General Policy Statement) contains the general standards policy of the commission.

OFFICIAL

Texas Administrative Code

Title 30 Environmental Quality

1997–Part Two

[Replaces 1996 Pamphlet]

Amendments effective through
January 1, 1997



Published by
West Group
St. Paul, Minn.

under authority of the Texas Secretary of State

person may request in writing of the executive director that he evaluate the facility.

(b) A waste disposal facility which has been rated, may be revaluated by the executive director at least once a year to ensure that the facility continues to merit approval.

(c) Whenever a person's waste disposal facility is given a rating attained and the factors which brought about the rating.

Source: The provisions of this §323.23 adopted to be effective February 23, 1978, 3 TexReg 620.

CHAPTER 324. USED OIL

SUBCHAPTER A. USED OIL RECYCLING

Section

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Authority: The provisions of this Chapter 324 issued under the Texas Water Code, §§5.103, 5.105, and 26.011; and the Solid Waste Disposal Act, Texas Health and Safety Code, §361.017 and §361.024 and Chapter 371.

Cross References: This Chapter cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.41, (relating to Purpose, Scope and Applicability); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.504, (relating to Hazardous Waste Determination).

SUBCHAPTER A. USED OIL RECYCLING

§ 324.1. Adoption by Reference

Except as provided in §§324.3, 324.4, 324.6, 324.7, and 324.11-324.13 of this title (relating to Applicability, Prohibitions, Generators, Collection Centers, Transporters and Transfer Facilities, Processors and Rerefiners, and Burners of Off-specification Used Oil for Energy Recovery), and subject to the changes indicated in §324.2 of this title (relating to Definitions), the regulations contained in 40 Code of Federal Regulations (CFR), Part 279, Standards for the Management of Used Oil, as amended, are adopted by reference.

Source: The provisions of this §324.1 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.2. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, except when the context clearly indicates otherwise. Terms defined in 40 CFR §279.1 shall have the same meaning when used in this rule, except as specifically defined in this section.

Aboveground tank—A tank used to store or process used oil that is not an underground storage tank as defined in Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

Administrator or Regional Administrator—These terms in 40 CFR Part 279 requirements should be replaced with the "State Administrator, the Executive Director of the Texas Natural Resource Conservation Commission or his representative."

Commission—The Texas Natural Resource Conservation Commission (Commission) or its successor.

Environmental Protection Agency (EPA)—This term in 40 CFR Part 279 requirements should be replaced with "commission."

Recycling—

(A) Preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) Using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) Burning used oil for energy recovery.

Re-refining—Applying processes to material composed primarily of used oil to produce high-quality base stocks for lubricants or other petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating, or polishing.

Secondary containment—Structures (dikes, berms, and/or retaining walls) or equivalent secondary containment systems that are made of a material(s) that is sufficiently impervious to used oil and capable of containing all potential spills and releases of used oil from the tanks or containers, plus run-on water, until the facility owner or operator can take measures to clean up the released used oil and the run-on water.

Sufficiently impervious to used oil—Capable of containing all potential spills and releases of used oil to soil, surface water, and ground water from containers and tanks until the facility owner or operator can take measures to clean up the released used oil.

Synthetic oils—Oils not derived from crude oil, including those derived from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids which are used as hydraulic fluids and heat transfer fluids, such as those based on phosphate esters, diphenyl oxide or alkylated benzenes. Synthetic oils are generally used for the same purpose as crude oil derived oils, are usually mixed and managed in the same manner, and present relatively the same level of hazard after use.

Source: The provisions of this §324.2 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference).

§ 324.3. Applicability

Applicability and exemptions from applicability will be as in 40 CFR Part 279, Subpart B, and as clarified herein.

(1) A used oil that has been determined to be listed hazardous must be handled in accordance with hazardous waste rules. EPA Hazardous Waste Number "F002" shall be used on used oil that is listed hazardous due to halogenated contaminants, because the EPA has not provided a Hazardous Waste Number to properly manifest such listed hazardous waste.

(2) The requirement in 40 CFR Part 279 that refers to compliance with Parts 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in full compliance with 40 CFR Part 264/265, Subpart K. Used oil can be stored in tanks and containers not subject to 40 CFR Part 264 or 265.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10(b) (concerning Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for "ignitability only" can be mixed with used oil, but the resultant mixture cannot exhibit the hazardous characteristic of ignitability if it is to be managed under this chapter and 40 CFR Part 279. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics; the resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils, lubricants, or other used oil derived products is also a processor subject to 40 CFR Part 279, Subpart F (concerning Standards for Used Oil Processors and Re-refiners) and §324.12 of this title (relating to Processors and Rerefiners).

(4) A used oil shall not be regulated under this chapter and 40 CFR Part 279 until it is a spent material as defined in 40 CFR §261.1(c)(1) and §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

Source: The provisions of this §324.3 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference).

§ 324.4. Prohibitions

Prohibitions will be as in 40 CFR, Subpart B, §279.12 and as specified herein.

(1) A person shall not collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

(2) A person commits an offense if, without benefit of a valid permit authorizing the particular action, the person:

(A) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

(B) knowingly mixes or commingles used oil with waste that is to be disposed of in landfills or directly disposes of used oil on land;

(C) knowingly transports, treats, stores, disposes of, recycles, markets, burns, processes, rerefines, or causes any used oil to be transported or otherwise handled within the state:

(i) without first complying with the notification/registration requirements of this rule; and/or

(ii) in violation of standards or rules for the management of used oil;

(D) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;

(E) violates an order of the commission to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or

(F) intentionally makes any false statement or representation in an application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of program compliance.

(3) It is an exception to the application of paragraph (2) of this section if a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(4) It is an exception to the application of paragraph (2)(B) of this section if the mixing or commingling of used oil with waste that is to be disposed of in landfills is incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances or other items of scrap, used, or obsolete metals.

Source: The provisions of this §324.4 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference); 30 TAC §324.17, (relating to Criminal Penalties).

~~§ 324.5. Notice by Retail Dealer~~

~~(a) A retail dealer who annually sells directly to the public more than 500 gallons of automotive oil annually in containers for use off-premises shall post in a prominent place a sign provided by the commission:~~

~~(1) informing the public that improper disposal of used oil is prohibited by law;~~

~~(2) informing the public that used oil filters cannot be disposed of in municipal landfills or waste going to municipal landfills;~~

~~(3) prominently displaying the toll-free telephone number of the state used oil information center.~~

~~(b) Written requests for signs should be sent to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.~~

~~**Source:** The provisions of this §324.5 adopted to be effective March 6, 1996, 21 TexReg 2393.~~

§ 324.6. Generators

Standards for used oil generators shall be as in 40 CFR Part 279, Subpart C. A person or entity that services equipment involving removal of used oil or changes used oil at a customer's home or business and transports the used oil from the site in quantities less than or equal to 55 gallons may opt to be the generator of the used oil. If the service company removing the used oil from equipment does not assume generator responsibility, the site owner or operator where the used oil is removed will remain the generator.

Source: The provisions of this §324.6 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference).

§ 324.7. Collection Centers

Standards for do-it-yourselfer used oil collection centers and used oil collection centers shall be as in 40 CFR Part 279, Subpart D and as specified herein. All appropriate businesses and government agencies are encouraged to serve as do-it-yourselfer used oil collection centers or used oil collection centers. All collection centers collecting used oil from households will be publicized by the commission.

(1) Do-it yourselfer used oil collection center:

(A) must post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) registration requirements:

(i) must register biennially, by no later than January 25 following the close of the biennial year, with the Texas Natural Resource Conservation Commission, Municipal

Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087, utilizing a form provided by the commission. Registrations will expire on December 31 in even numbered years. Collection centers that have already registered their used oil activities prior to the effective date of this rule do not need to register again until their registrations have expired on December 1 of an even numbered year. New collection centers shall register within 30 days of initial operation;

(ii) must collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(C) must notify the commission in writing within 30 days following abandonment or closure of the collection center or the cessation of accepting household used oil from private citizens;

(D) shall annually report the amount of household used oil collected by January 25 of each year on a form provided by the commission;

(E) is not subject to the rebuttable presumption.

(2) Used Oil Collection Center:

(A) must post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) registration requirements:

(i) must register biennially, by no later than January 25 following the close of the biennial year, with the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087, utilizing a form provided by the commission. Registrations will expire on December 31 in even numbered years. Collection centers that have already registered their used oil activities prior to the effective date of this rule do not need to register again until their registrations have expired on December 1 of an even numbered year. New collection centers shall register within 30 days of initial operation;

(ii) must collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(C) must notify the commission in writing within 30 days following abandonment or closure of the collection center or the cessation of accepting household used oil from private citizens;

(D) shall report annually the amount of household and non-household used oil collected by January 25 of each year on a form provided by the commission. Mixtures of household used oil and non-household used oil shall be considered non-household used oil;

(E) is not subject to the rebuttable presumption on household used oil if it is not mixed with non-household used oil.

Source: The provisions of this §324.7 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference); 30 TAC §324.18, (relating to Civil Penalty).

§ 324.8. Limitation of Liability

(a) A person may not recover from the owner, operator, or lessor of a registered do-it-yourselfer used oil collection center or used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

(1) the owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);

(2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and

(3) the collection center is in compliance with management standards adopted by the commission.

(b) For purposes of this section, the owner, operator, or lessor of a do-it-yourselfer used oil collection center or a used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a do-it-yourselfer used oil collection center or a used oil collection center. This section does not apply to grossly negligent activities related to the operation of a do-it-yourselfer used oil collection center or a used oil collection center.

(d) This section does not affect or modify the obligations or liability of any person other than the owner, operator, or lessor of the collection center under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances.

(e) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a collection center with regard to services other than accepting used oil from the public.

Source: The provisions of this §324.8 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.9. Reimbursement of Used Oil Collection Center's Hazardous Waste Disposal Expense

(a) The commission, on proper application, shall reimburse the owner or operator of an eligible registered do-it-yourselfer used oil collection center or a used oil collection center for costs associated with the collection center's disposal of:

(1) household do-it-yourselfer used oil collected by the collection center that, unknown to the center at the time of collection, contains hazardous wastes or is unfit for recycling;

(2) household do-it-yourselfer used oil collected by the collection center that has been commingled with oils described in paragraph (1) of this subsection and is unsuitable for recycling; or

(3) contaminated used oil left at the collection center as used oil after posted business hours and without the knowledge of the collection center.

(b) A registered do-it-yourselfer used oil collection center or used oil collection center is eligible for reimbursement if it demonstrates to the satisfaction of the commission that:

(1) the center has established procedures to minimize the risk that the center will mix the used oil the center generates or collects from the public with hazardous wastes, especially halogenated wastes;

(2) the center accepts not more than:

(A) five gallons of household used oil from any person at any one time if the center is a registered do-it-yourselfer used oil collection center; or

(B) 55 gallons of non-household used oil from any person at one time if the center is a registered used oil collection center.

(3) the center can document to the satisfaction of the commission the volume of used oil the center collects from the public during any period under review by:

(A) providing a process by which all individuals leaving household do-it-yourselfer used oil at the center are required to provide their names, addresses, and the approximate amounts of used oil brought to the collection center; or

(B) another method approved by the commission.

(c) For the purpose of subsection (b)(2) of this section, the owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may presume that a quantity of used oil collected from a member of the public that does not exceed the applicable collection limit established by that subsection is not mixed with a hazardous substance if the owner or operator acts in good faith in the belief the oil is generated from the individual's personal activity.

(d) In any state fiscal year, a registered do-it-yourselfer used oil collection center or used oil collection center may not be reimbursed for more than $7,500 in total eligible disposal costs, subject to §324.10(d) of this title (relating to Procedures for Reimbursement of Collection Centers).

(e) Reimbursements made under this section shall be paid out of the used oil recycling fund and may not exceed an aggregate amount of $500,000 each fiscal year.

Source: The provisions of this §324.9 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.10, (relating to Procedures for Reimbursement of Collection Centers).

§ 324.10. Procedures for Reimbursement of Collection Centers

(a) An owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may apply for reimbursement from the commission.

(b) An application for reimbursement shall be submitted on a form approved or provided by the commission.

(c) An application must contain:

(1) the name, address, and telephone number of the applicant;

(2) the name, mailing address, location address, and commission registration number of

~~the registered do-it-yourselfer used oil collection~~ center or used oil collection center from which the contaminated oil was removed;

(3) the name, address, telephone number and commission registration number of the hazardous waste transporter used to dispose of the contaminated used oil;

(4) a copy of any shipping documents that accompanied the transportation of the shipment of used oil;

(5) a copy of each invoice for which reimbursement is requested and evidence that the amount shown on the invoice has been paid in full in the form of:

(A) canceled checks;

(B) business receipts from the person who performed the work; or

(C) other documentation approved by the commission;

(6) a waste-characterization or similar documentation required before acceptance of a hazardous waste by the disposal facility that accepted the contaminated used oil for treatment or disposal; and

(7) any other information that the executive director may reasonably require.

(d) All claims for reimbursement filed under this section and §324.9 of this title (relating to Reimbursement of Used Oil Collection Center's Hazardous Waste Disposal Expense) are subject to funds available for disbursement in the used oil recycling fund and to §324.9(e) of this title. Section 324.9 of this title and this section do not create an entitlement to money in the used oil recycling fund or any other fund.

Source: The provisions of this §324.10 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.9, (relating to Reimbursement of Used Oil Collection Center's Hazardous Waste Disposal Expense).

§ 324.11. Transporters and Transfer Facilities

Standards for used oil transporters and transfer facilities shall be as in 40 CFR Part 279, Subpart E and as specified in this section.

(1) Underground storage tanks (USTs). Underground storage tanks that contain used oil are subject to the UST standards in Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) in addition to those in 40 CFR Part 279.

(2) Registration. Transporters must register with the EPA one time on their used oil activities and with the commission biennially by January 25 of the year following the end of the biennial year. Transporters must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Transporters must register, through the commission, using EPA Form 8700-12 (one time) and a form provided by the commission (biennially). Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Annual report. Report annually, by January 25 of the year following the report year, the sources of used oil handled during the preceding year, the quantity of used oil received, the date of receipt, and the destination or end use of the used oil. A single consolidated report may be submitted for each company summarizing each type of used oil activity, i.e., generator, transporter, transfer facility, re-refiner, processor, marketer, burner.

Source: The provisions of this §324.11 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference); 30 TAC §324.12, (relating to Processors and Rerefiners); 30 TAC §324.13, (relating to Burners of Off-specification Used Oil for Energy Recovery).

§ 324.12. Processors and Rerefiners

Standards for used oil processors and rerefiners shall be as in 40 CFR Part 279, Subpart F and as specified in this section.

(1) Underground storage tanks. Section 324.11(1) of this title (relating to Transporters and Transfer Facilities) applies.

(2) Registration. Processors and rerefiners must register with the EPA one time on their used oil activities and with the commission biennially by January 25 of the year following the end of the biennial year. Processors and rerefiners must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Processors and rerefiners must register, through the commission, using EPA Form 8700-12 (one time) and a form provided by the commission (biennially).

Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Analysis plan. Each facility must prepare an analysis plan which a facility will follow when performing sampling and analysis, keeping records, and when complying with analytical requirements for documenting that used oil is not listed hazardous and/or the used oil fuel specification has been met. This plan must specify the frequency of sampling and analysis, procedures and analysis (to assure listed hazardous wastes are not mixed with the used oil received), and procedures for handling a shipment of contaminated used oil. A facility that only processes its own used oil and uses adequate process knowledge instead of analysis to prove that the used oil meets rule requirements need not prepare an analysis plan.

(4) Annual report. The processor/rerefiner biennial report information required by 40 CFR §279.57(b) shall be provided to the commission annually by January 25 of the following year. A single consolidated report may be submitted for each company summarizing each type of used oil activity, i.e., generator, transporter, transfer facility, re-refiner, processor, marketer, burner. The information shall be entered on a commission-prescribed form and forwarded to the commission. Mail the report form to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.12 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference); 30 TAC §324.3, (relating to Applicability).

§ 324.13. Burners of Off-specification Used Oil for Energy Recovery

Standards for burners of off-specification used oil for energy recovery shall be as in 40 CFR Part 279, Subpart G and as specified in this section.

(1) Underground storage tanks. Section 324.11(1) of this title (relating to Transporters and Transfer Facilities) applies.

(2) Registration. Burners of off-specification used oil for energy recovery must register with the EPA one time on their used oil activities and with the commission biennially by January 25 of the year following the end of the biennial year. Burners must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Burners must register, through the commission, using EPA Form 8700-12 (one time) and a form provided by the commission (biennially). Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Annual report. Report annually, by January 25 of the year following the report year, the sources of used oil handled during the preceding year, the quantity of used oil received, and the date of receipt. A single consolidated report may be submitted for each company summarizing each type of used oil activity, i.e., generator, transporter, transfer facility, re-refiner, processor, marketer, burner.

Source: The provisions of this §324.13 adopted to be effective March 6, 1996, 21 TexReg 2393.

Cross References: This Section cited in 30 TAC §324.1, (relating to Adoption by Reference).

§ 324.14. Marketers of Used Oil Fuel

Standards for marketers of used oil which will be burned for energy recovery shall be as in 40 CFR Part 279, Subpart H, and this subchapter. Marketers of used oil which will be burned for energy recovery must register with the EPA one time on their used oil activities and the commission biennially by January 25 of the year following the end of the biennial year. Marketers must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Marketers must register, through the commission, using EPA Form 8700-12 (one time) and a form provided by the commission (biennially). Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.14 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.15. Spills

Whenever there is a catastrophic release or discharge of used oil and used oil reaches the environment, corrective measures must be immediately taken by the responsible person to adequately protect human health and the environment from potential damages. A spill of used oil in an amount sufficient to cause a sheen on water or a spill of automotive engine used oil or a mixture of automotive used oil and other used oil of 25 gallons or more that goes into the environment at a do-it-yourselfer used oil collection center should be reported to the commission as soon as possible and not later than 24 hours after discovery. (See 40 CFR §279.43(c) for discharges during transport.) A spill or overfill of used oil at an underground storage tank that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water shall be reported and handled as in §334.75 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills). All other used oil spills must be reported in accordance with other applicable commission requirements and agreements. The responsible person may notify the commission in any reasonable manner including by telephone, in person, or by any other method approved by the commission.

(1) During normal business hours, the responsible person may notify the regional office for the commission region in which the discharge or spill occurred; or

(2) After normal business hours, the responsible person may call the commission Emergency Response Unit 24-hour number at (512) 239-2507 or the state toll-free Spill Reporting Hotline at (800) 832-8224.

Source: The provisions of this §324.15 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.16. Polychlorinated Biphenyls (PCBs)

Pursuant to 40 CFR Part 279 (Table 1), the applicable standards for the burning of used oil containing PCBs shall be as set out in 40 CFR §761.20(e).

Source: The provisions of this §324.16 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.17. Criminal Penalties

(a) Except as provided by subsection (b) of this section, an offense under §324.4 of this title (relating to Prohibitions) is punishable by:

(1) a fine of not less than $100 or more than $10,000 for each act of violation or each day of a continuing violation;

(2) imprisonment for at least six months; or

(3) both the fine and the imprisonment.

(b) If it is shown on the trial of an offense under §324.4 of this title (relating to Prohibitions) that the defendant has previously been convicted of an offense under §324.4 of this title, the offense is punishable by:

(1) a fine of not less than $200 or more than $20,000 for each act of violation or each day of a continuing violation;

(2) imprisonment for at least one year; or

(3) both the fine and the imprisonment.

Source: The provisions of this §324.17 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.18. Civil Penalty

(a) Except as provided by subsection (c) of this section, a person who violates this chapter or a rule or order adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each act of violation and for each day of violation.

(b) A civil penalty recovered in a suit brought by a local government under this section shall be divided equally between the state and the local government that brought the suit. The state shall deposit its recovery to the credit of the used oil recycling fund.

(c) The penalty imposed by this section does not apply to failure to file a report under §324.7 of this title (relating to Collection Centers).

(d) The commission, a local government in whose jurisdiction the violation occurs, or the state may bring suit to recover a penalty under this section.

Source: The provisions of this §324.18 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.19. Injunctive Relief

(a) If it appears that a violation or threat of violation of the sections under this rule or any order adopted under this rule has occurred or is about to occur and is causing or may cause immediate injury or constitutes a significant threat to the health, welfare, or personal property of a citizen or a local government, the commission, the local government, or the state may bring suit in district

~~court for injunctive relief to restrain the violation,~~ or the threat of violation.

(b) In a suit for injunctive relief, the court may grant an injunctive or mandatory relief warranted by the facts, including a temporary restraining order, a temporary injunction, or a permanent injunction. Injunctive relief shall be granted without the requirement for a bond or other undertaking by any governmental entity seeking the injunction.

Source: The provisions of this §324.19 adopted to be effective March 6, 1996, 21 TexReg 2393.

§ 324.20. Venue

A suit for injunctive relief, for recovery of a civil penalty, or both, may be brought in:

(1) the county in which the defendant resides;

(2) the county in which the violation or threat of violation occurs; or

(3) Travis County.

Source: The provisions of this §324.20 adopted to be effective ~~March 6, 1996, 21 TexReg 2393.~~

§ 324.21. Suspension or Revocation of Registration

(a) The commission may suspend or revoke a registration for:

(1) failure to maintain complete and accurate records;

(2) alteration of any record maintained or received by the registrant, outside of justified and documented corrections;

(3) delivery of used oil to an entity not registered with the commission;

(4) failure to comply with this rule or an order issued by the commission;

(5) failure to submit annual reports as required;

(6) failure to maintain financial assurance as required; or

(7) failure to reasonably perform the used oil activities for which the registration was issued.

(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, a facility shall not possess or accept used oil regulated under this rule.

(c) The holder of a used oil registration that has been revoked by the commission may reapply for registration pursuant to this rule 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 commission a second time, the revocation shall be permanent.

(d) Appeal of a suspension or revocation of registration procedures are as follows.

(1) An opportunity for a formal hearing on the suspension or revocation 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 proposed suspension or revocation of registration has been sent from the executive director to the last known address of the applicant.

(2) An opportunity for a formal hearing 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 of registration suspension or revocation has been sent from the executive director to the last known address listed on the application. If the registration is denied, a person shall not possess used oil regulated under this rule.

(3) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2002 (Vernon 1992), the Texas Solid Waste Disposal Act, Texas Health, and Safety Code, Chapters 361 and 371 (Vernon 1992), and the rules of the commission.

Source: The provisions of this §324.21 adopted to be effective March 6, 1996, 21 TexReg 2393.

~~CHAPTER 325. CERTIFICATES OF COMPETENCY~~

Section
325.1. Definitions.
325.2. Certificates for Wastewater Treatment Plant Operators.
~~325.3. Certificates for Collection System Operators.~~
Section
325.4. (Effective Beginning September 1, 1991)—Classification of Wastewater Treatment Facilities.
325.5. Applications and Fees.
~~325.6. Renewal of Operator Certificates.~~

OFFICIAL

Texas Administrative Code

Title 30 Environmental Quality

1997–Part Two

[Replaces 1996 Pamphlet]

Amendments effective through
January 1, 1997



Published by
West Group
St. Paul, Minn.

under authority of the Texas Secretary of State

Waste Treatment—Fixed Thermal Treatment (Per Ton)	Average	Maximum
Sand/Silt	$ 30.00	$ 45.00
Clay	$ 55.00	$ 85.00
Limestone	$ 50.00	$ 70.00

Waste Treatment—Bioremediation (Per Ton)	Average	Maximum
Sand/Silt	$ 35.00	$ 40.00
Clay	$ 30.00	$ 35.00
Limestone	$ 30.00	$ 30.00

The above costs include allowances for personnel, materials, equipment, and collecting samples for laboratory analysis. These costs do not include laboratory analysis.

Source: The provisions of this §334.560 adopted to be effective June 29, 1993, 18 TexReg 3767.

Cross References: This Section cited in 30 TAC §334.2, (relating to Definitions).

CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

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Authority: The provisions of this Chapter 335 issued under the Texas Water Code, §5.103 and §5.105, unless otherwise noted.

Cross References: This Chapter cited in 30 TAC §120.13, (relating to Representations in Application for Permit); 30 TAC §213.3, (relating to Definitions); 30 TAC §305.30, (relating to Emergency Actions Concerning Hazardous Waste); 30 TAC §305.50, (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit); 30 TAC §305.51, (relating to Revision of Applications for Hazardous Waste Permits); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.127, (relating to Conditions To Be Determined for Individual Permits); 30 TAC §305.156, (relating to Hazardous Waste); 30 TAC §312.3, (relating to Exclusions); 30 TAC §312.141, (relating to Transporters—Applicability and Responsibility); 30 TAC §330.955, (relating to Prohibitions); 30 TAC §331.47, (relating to Pond Lining); 30 TAC §332.4, (relating to General Requirements); 30 TAC §333.9, (relating to Deed Certification); 30 TAC §334.95, (relating to Financial Test of Self-Insurance); 30 TAC §334.483, (relating to Disposal by Generator).

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

Cross References: This Subchapter cited in 30 TAC §327.1, (relating to Applicability); 30 TAC §335.30, (relating to Appendix I); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.69, (relating to Accumulation Time); 30 TAC §335.91, (relating to Scope); 30 TAC §335.212, (relating to Standards Applicable to Generators and Transporters of Materials Used in a Manner That Constitutes Disposal); 30 TAC §335.213, (relating to Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate); 30 TAC §335.214, (relating to Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal); 30 TAC §335.222, (relating to Management Prior to

Burning); 30 TAC §335.223, (relating to Additional Permit Standards for Burners); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.251, (relating to Applicability and Requirements).

§ 335.1. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly requires otherwise.

Aboveground tank—A device meeting the definition of tank in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

Act—The Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992).

Active life—The period from the initial receipt of hazardous waste at the facility until the executive director received certification of final closure.

Active portion—That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

~~Activities associated with the exploration, development~~, and protection of oil or gas or geothermal resources—Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the ~~Texas Natural Resources Code, §91.173;~~

~~(v) activities associated with any underground~~ hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A)-(C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants or repressurizing plants, if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United ~~States Code §6901 et seq.~~)

Administrator—The administrator of the United States Environmental Protection Agency or his designee.

Ancillary equipment—Any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or processing tank(s), between hazardous waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

Aquifer—A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

Authorized representative—The person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

Boiler—An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or force draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

Carbon regeneration unit—Any enclosed thermal treatment device used to regenerate spent activated carbon.

Certification—A statement of professional opinion based upon knowledge and belief.

~~Class 1 wastes—Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination). Class 1 waste is also referred to throughout this chapter as Class I waste.~~

~~Class 2 wastes—Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination). Class 2 waste is also referred to throughout this chapter as Class II waste.~~

~~Class 3 wastes—Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination). Class 3 waste is also referred to throughout this chapter as Class III waste.~~

Closed portion—That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

Closure—The act of permanently taking a waste management unit or facility out of service.

~~Commercial hazardous waste management facility—Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.~~

Component—Either the tank or ancillary equipment of a tank system.

Confined aquifer—An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

Consignee—The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

Container—Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

Containment building—A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title (relating to Standards).

~~Contaminant—Includes, but is not limited to,~~ "solid waste," "hazardous waste," and "hazardous waste constituent" as defined in this subchapter; "pollutant" as defined in the Texas Water Code, §26.001, and the Texas Health and Safety Code, §361.431; "hazardous substance" as defined in the Texas Health and Safety Code, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, the Texas Water Code, §§26.261-26.268.

Contaminated medium/media—A portion or portions of the physical environment to include soil, sediment, surface water, groundwater, or air, that contain contaminants at levels that pose a substantial present or future threat to human health and ~~the environment.~~

Contingency plan—A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

~~Control—To apply engineering measures such as~~ capping, reversible treatment methods, and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, ~~and any necessary further corrective action.~~

Corrective action management unit or CAMU—An area within a facility that is designated by the commission under 40 Code of Federal Regulations, Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action). A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

Corrosion expert—A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

~~Decontaminate—To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.~~

Designated facility—A Class I or hazardous waste storage, processing, or disposal facility which has received an Environmental Protection Agency (EPA) permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations Parts 270 and 124; a permit from a state authorized in accordance with 40 Code of Federal Regulations Part 271 (in the case of hazardous waste); a permit issued pursuant to §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste); or that is regulated under §335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator pursuant to §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

Dike—An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

Discharge or hazardous waste discharge—The accidental or intentional spilling, leaking, pump-

ing, pouring, emitting, emptying, or dumping of waste into or on any land or water.

Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Disposal facility—A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

Drip pad—An engineered structure consisting of a curbed, free-draining base, constructed of a nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

Elementary neutralization unit—A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations §261.22, or are listed in 40 Code of Federal Regulations, Part 261, Subpart D, only for this reason; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

Environmental Protection Agency acknowledgment of consent—The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste, and describes the terms and conditions of the receiving country's consent to the shipment.

Environmental Protection Agency hazardous waste number—The number assigned by the Environmental Protection Agency to each hazardous waste listed in 40 Code of Federal Regulations, Part 261, Subpart D, and to each characteristic identified in 40 Code of Federal Regulations, Part 261, Subpart C.

Environmental Protection Agency identification number—The number assigned by the Environmental Protection Agency or the commission to each generator, transporter, and processing, storage, or disposal facility.

Equivalent method—Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

~~Essentially insoluble—Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the Federal Register.~~

Existing portion—That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

Existing tank system or existing component—A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations—which cannot be canceled or modified without substantial loss—for physical construction of the site or installation of the tank system to be completed within a reasonable time.

Facility—Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several storage, processing, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under the Texas Solid Waste Disposal

Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action).

Final closure—The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

Food-chain crops—Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

Freeboard—The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

Free liquids—Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

Generator—Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class III wastes only shall not be considered a generator.

Groundwater—Water below the land surface in a zone of saturation.

~~Hazardous industrial waste—Any industrial solid~~ waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations, Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

~~Hazardous substance—Any substance designated~~ as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 Code of Federal Regulations, Part 302.

Hazardous waste—Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended.

Hazardous waste constituent—A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations, Part 261, Subpart D, or a constituent listed in Table 1 of 40 Code of Federal Regulations §261.24.

Hazardous waste management facility—All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

Hazardous waste management unit—A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

In operation—Refers to a facility which is processing, storing, or disposing of hazardous waste.

Inactive portion—That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

Incinerator—Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

Incompatible waste—A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

Individual generation site—The contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

Industrial furnace—Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

~~Industrial solid waste—Solid waste resulting~~ from or incidental to any ~~process of~~ industry or manufacturing, or ~~mining~~ or agricultural operation, ~~which~~ may include hazardous waste as ~~defined in this section.~~

Infrared incinerator—Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

Inground tank—A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

Injection well—A well into which fluids are injected. (See also "underground injection.")

Inner liner—A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

Installation inspector—A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

International shipment—The transportation of hazardous waste into or out of the jurisdiction of the United States.

Land treatment facility—A facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

Landfill—A disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

Landfill cell—A discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

Leachate—Any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

Leak-detection system—A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

Liner—A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

Management or hazardous waste management—The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

Manifest—The uniform hazardous waste manifest form, Form TWC-0311, and, if necessary, TWC-0311B, furnished by the executive director to accompany shipments of municipal hazardous waste or Class I industrial solid waste.

Manifest document number—A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

Miscellaneous unit—A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research Development and Demonstration Permits).

Movement—That hazardous waste transported to a facility in an individual vehicle.

Municipal hazardous waste—A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

Municipal solid waste—Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

New tank system or new tank component—A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 Code of Federal Regulations §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

Off-site—Property which cannot be characterized as on-site.

Onground tank—A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

On-site—The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person, but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

Open burning—The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

Operator—The person responsible for the overall operation of a facility.

Owner—The person who owns a facility or part of a facility.

Partial closure—The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

PCBs or polychlorinated biphenyl compounds—Compounds subject to Title 40, Code of Federal Regulations, Part 761.

Permit—A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste storage, processing, or disposal facility in accordance with specified limitations.

Person—Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Personnel or facility personnel—All persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

~~Petroleum substance—A crude oil or any refined~~ or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this definition for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except ~~for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq))~~ and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances—i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels—a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes but is not limited to stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines—i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels—i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils—i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils—i.e., Number 4-D, Number 4 light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils—i.e., Grade O-GT, Grade 1GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils—i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants—i.e., automotive and industrial lubricants;

(x) building materials—i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials—i.e., transformer oils and cable oils;

(xii) used oils—(See definition for "used oil" in this section); and

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere)—i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

~~(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;~~

~~(ii) animal, microbial, and vegetable fats;~~

~~(iii) food grade oils;~~

~~(iv) hardened asphalt and solid asphaltic materials—i.e., roofing shingles, roofing felt, hot mix (and cold mix); and~~

~~(v) cosmetics.~~

Pile—Any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

Plasma arc incinerator—Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

Primary exporter—Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations, Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

Processing—The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended.

Publicly owned treatment works (POTW)—Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Qualified groundwater scientist—A scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

Receiving country—A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

Regional administrator—The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

~~Remediation—The act of eliminating or reducing the concentration of contaminants in contaminated media.~~

Remediation waste—All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or

§335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

~~Remove—To take waste, contaminated design or~~ operating system components, ~~or~~ contaminated media away from a ~~waste~~ management unit, facility, or ~~area to another~~ location for storage, processing, ~~or disposal.~~

Replacement unit—A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

Representative sample—A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

Run-off—Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Run-on—Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

Saturated zone or zone of saturation—That part of the earth's crust in which all voids are filled with water.

~~Shipment—Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off site.~~

Sludge dryer—Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

Small quantity generator—A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

Solid Waste—

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United

States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended; or

(iv) a material excluded by 40 Code of Federal Regulations §261.4(a)(1)-(11) or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste).

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph; or

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 Code of Federal Regulations §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 Code of Federal Regulations §261.33, not listed in §261.33 but that exhibit one or more of the hazardous waste characteristics, or would be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

TABLE 1

	Use Constituting Disposal (1)	Energy Recovery/Fuel (2)	Reclamation (3)	Speculative Accumulation (4)
Spent materials (listed hazardous & non-listed characteristically hazardous)	*	*	*	*
Spent materials (Class I non-hazardous and Class II)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (non-listed characteristically hazardous)	*	*		*
Sludges (Class I non-hazardous and Class II)[1]	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*

	Use Constituting Disposal (1)	Energy Recovery/Fuel (2)	Reclamation (3)	Speculative Accumulation (4)
By-products (non-listed characteristically hazardous)	*	*		*
By-products (Class I non-hazardous and Class II)[1]	*	*		*
Commercial chemical products listed in 40 CFR §261.33	*	*		
Scrap metal (hazardous)	*	*	*	*
Scrap metal (Class I non-hazardous and Class II)[1]	*	*	*	*

NOTE: The terms "spent materials", "sludges", "by-products", and "scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).
[1] These materials are governed by the provisions of §335.24(h) only.

(E) Materials that are identified by the administrator of the Environmental Protection Agency as inherently waste-like materials under 40 Code of Federal Regulations §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products; or

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land;

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process, provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the Environmental Protection Agency, as described in 40 Code of Federal Regulations §261.2(d)(1)-§261.2(d)(2).

(H) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(I) Materials that are reclaimed from solid wastes and that are used beneficially are not

solid wastes and hence are not hazardous wastes under 40 Code of Federal Regulations §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

Sorbent—A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

~~Spill—The accidental spilling, leaking, pumping, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.~~

Storage—The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

Sump—Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, processing, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

Surface impoundment or impoundment—A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

Tank—A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

Tank system—A hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

Thermal processing—The processing of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

Totally enclosed treatment facility—A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

Transfer facility—Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

Transit country—Any foreign country, other than a receiving country, through which a hazardous waste is transported.

Transport vehicle—A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used, as a means of transportation on the water.

Transporter—Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

Treatability study—A study in which a hazardous waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not

a means to commercially treat or dispose of hazardous waste.

~~Treatment—To apply a physical, biological, or~~ chemical process(es) to wastes and ~~contaminated~~ media which significantly ~~reduces~~ the toxicity, volume, or mobility ~~of contaminants~~ and which, depending ~~on the~~ process(es) used, achieves varying ~~degrees of long-term effectiveness.~~

Treatment zone—A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

Underground injection—The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

Underground tank—A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

Unfit-for-use tank system—A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing hazardous waste without posing a threat of release of hazardous waste to the environment.

Unsaturated zone or zone of aeration—The zone between the land surface and the water table.

Uppermost aquifer—The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

Used oil—Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, Conditionally Exempt Small Quantity Generator (CESQG) hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil) and 40 CFR Part 279 (concerning Standards for Management of Used Oil).

Wastewater treatment unit—A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code 466 et seq., 402 or 307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous waste, or generates and accumulates a wastewater treatment sludge which is a hazardous waste, or processes or stores a wastewater treatment sludge which is a hazardous waste; and

(C) meets the definition of tank or tank system as defined in this section.

Water (bulk shipment)—The bulk transportation of municipal hazardous waste or Class I industrial solid waste which is loaded or carried on board a vessel without containers or labels.

Well—Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

Zone of engineering control—An area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to groundwater or surface water.

Source: The provisions of this §335.1 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective January 6, 1987, 11 TexReg 5096; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective February 1, 1989, 14 TexReg 316; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective November 7, 1991, 16 TexReg 6065; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 27, 1992, 17 TexReg 8010; amended to be effective June 28, 1993, 18 TexReg 3814; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 22, 1994, 19 TexReg 969; amended to be effective May 30, 1995, 20 TexReg 3722; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective March 6, 1996, 21 TexReg 2400; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §101.1, (relating to Definitions); 30 TAC §115.10, (relating to Definitions); 30 TAC §213.8, (relating to Prohibited Activities); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.66, (relating to Permit Denial, Suspension, and Revocation); 30 TAC §312.3, (relating to Exclusions); 30 TAC §312.8, (relating to General Definitions); 30 TAC §321.131, (relating to Definitions); 30 TAC §327.2, (relating to Definitions); 30 TAC §330.2, (relating to Definitions); 30 TAC §331.2, (relating to Definitions); 30 TAC §335.17, (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.20, (relating to Variance To Be Classified as a Boiler); 30 TAC §335.41, (relating to Purpose, Scope and Applicability); 30 TAC §335.322, (relating to Definitions); 30 TAC §335.503, (relating to Waste Classification and Waste Coding Required); 30 TAC §335.508, (relating to Classification of Specific Industrial Solid Wastes).

§ 335.2. Permit Required

(a) Except with regard to storage, processing, or disposal to which subsections (c)-(h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Natural Resource Conservation Commission or its predecessor agencies, the Texas Department of Health, or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

~~(b) In accordance with the requirements of sub~~section (a) of this section, no generator, transporter, owner, or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in a violation of a permit. In the event this requirement is violated, the executive director will seek resource against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner, or operator, or other person who caused, suffered, allowed, or permitted its waste to be ~~stored, processed, or disposed.~~

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the Texas Natural Resource Conservation Commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities which satisfied this requirement by filing an application on or before November 19, 1980, with the United States Environmental Protection Agency are not required to submit a separate application with the Texas Department of Health. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §§6901 et seq., that render the facility subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards set forth in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the United States Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Applica-

tion for Existing On-Site Facilities). For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for the storage, processing, or disposal of industrial solid waste which is not hazardous industrial waste, if the waste is disposed of on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §335.6 of this title (relating to Notification Requirements).

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b)-(d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 Code of Federal Regulations §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste which is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements set out at 40 Code of Federal Regulations §261.4(e) and (f), as amended and adopted in the Code of Federal Regulations through February 18, 1994, at 59 FedReg 8362, which are adopted herein by reference.

~~(h) A person may obtain authorization from the~~ executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill which has qualified for interim status pursuant to 40 Code of Federal Regulations, Part 270, Subpart G, and which has complied with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), by complying with the notification and information requirements as set forth in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of Title 40, Code of Federal Regulations §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate in compliance with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or as otherwise provided by law. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the ~~storage, processing, or disposal of which is ex-~~

~~pressly prohibited under an existing permit or~~ site development plan applicable to the facility or a portion of the facility;

(2) PCB wastes subject to regulation by 40 Code of Federal Regulations, Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which would require a license from the Texas Department of Health or Texas Water Commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.136(b)(6)(B)-(E) of this ~~title (relating to Disposal of Special Wastes).~~

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 Code of Federal Regulations §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under 40 Code of Federal Regulations §270.1(c)(5) and (6). If a post-closure permit is required, the permit must address applicable provisions of 40 Code of Federal Regulations Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) provisions relating to groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the Texas Water Commission's (commission) Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the Environmental Protection Agency (EPA) imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

Source: The provisions of this §335.2 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective January 5, 1988, 12 TexReg 4846; amended to be effective February 1, 1989, 14 TexReg 316; amended to be effective August 14, 1990, 15 TexReg 4397; amended to be effective November 7, 1991, 16 TexReg 6065; amended to be effective May 12, 1993, 18 TexReg 2799; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective November 29, 1995, 20 TexReg 9748; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §50.17, (relating to Commission Actions); 30 TAC §120.3, (relating to Applicability); 30 TAC §281.2, (relating to Applicability); 30 TAC §305.42, (relating to Application Required); 30 TAC §324.3, (relating to Applicability); 30 TAC §332.3, (relating to Applicability); 30 TAC §332.4, (relating to General Requirements); 30 TAC §335.1, (relating to Definitions); 30 TAC §335.4, (relating to General Prohibitions); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.8, (relating to Closure and Remediation); 30 TAC §335.43, (relating to Permit Required); 30 TAC §335.94, (relating to Transfer Facility Requirements); 30 TAC §335.151, (relating to Purpose, Scope, and Applicability); 30 TAC §335.201, (relating to Purpose, Scope, and Applicability); 30 TAC §335.202, (relating to Definitions); 30 TAC §335.322, (relating to Definitions); 30 TAC §335.323, (relating to Generation Fee Assessment); 30 TAC §335.325, (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment); 30 TAC §335.362, (relating to Applicability); 30 TAC §343.2, (relating to Permit Exemption for Emergency Cleanup Activities).

§ 335.4. General Prohibitions

In addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Water Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health and welfare.

Source: The provisions of this §335.4 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692.

Cross References: This Section cited in 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.411, (relating to General Requirements for Transporters); 30 TAC §335.412, (relating to General Requirements for Processing, Storage, or Disposal Facilities)

§ 335.5. Deed Recordation of Waste Disposal

(a) Deed recordation of disposal of industrial solid waste or municipal hazardous waste. No person may cause, suffer, allow, or permit the disposal of industrial solid waste or municipal hazardous waste in a landfill prior to recording in the county deed records of the county or counties in which the disposal takes place the following information:

(1) a metes and bounds description of the portion or portions of the tract of land on which disposal of industrial solid waste or municipal hazardous waste will take place;

(2) the class or classes of industrial solid wastes or municipal hazardous wastes to be disposed of and waste description; and

(3) the name or permanent address of the person or persons operating the facility where more specific information on the disposal activity can be obtained.

(b) Proof of recordation. Proof of recordation shall be provided to the executive director in writing prior to instituting disposal operations.

(c) Additional requirements. Owners of property on which facilities for disposal of hazardous waste are located are subject to further requirements adopted by reference in §335.112(a)(6) of this title (relating to Standards).

Source: The provisions of this §335.5 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective June 28, 1993, 18 TexReg 3814.

Cross References: This Section cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.554, (relating to Attainment of Risk Reduction Standard Number 1: Closure/Remediation to Background).

§ 335.6. Notification Requirements

(a) A person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Non-hazardous Recyclable Materials), shall notify the executive director in writing that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such storage, processing, or disposal is compliant with the terms of this chapter. Such information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide written notice to the executive director of any changes or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, and the geology where the facility is located to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(c) Any person who generates hazardous waste in a quantity greater than the limits specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in a calendar month or greater than 100 kilograms in a calendar month of industrial non-hazardous Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director. Such person shall also submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title (relating to Permit Required), or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide written notice to the executive director of any such changes or additional information, to that reported previously. If waste is recycled on-site or managed pursuant to §335.2(d) of this title (relating to Permit Required), the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title

(relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(1) a description of the waste;

(2) a description of the process generating the waste;

(3) the composition of the waste;

(4) a proper hazardous waste determination which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations Part 261. Generators must determine whether such waste is hazardous as defined in 40 Code of Federal Regulations Part 261 and submit the results of that hazardous waste determination to the executive director;

(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:

(A) whether the waste is managed on-site and/or off-site;

(B) a description of the type and use of each on-site waste management facility unit;

(C) a listing of the wastes managed in each unit;

(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title (relating to Permit Required).

~~(d) Any person who transports hazardous waste~~ or Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director, except:

(1) industrial generators that generate less than 100 kilograms of non-hazardous Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) and who only transport their own waste; and

(2) municipal generators that generate less than the quantity limits of hazardous waste specified in §335.78 and who only transport their own waste.

~~(e) Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.~~

(f) Upon written request of the executive director, any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results of the analysis to the executive director.

(g) A person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 Code of Federal Regulations (CFR) §266.108 must provide a one-time signed, written notification to the United States Environmental Protection Agency and to the executive director indicating the following:

(1) The combustion unit is operating as a small quantity burner of hazardous waste;

(2) The owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection; and

(3) The maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

(j) Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil).

Source: The provisions of this §335.6 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective July 29, 1992, 17 TexReg 5616; amended to be effective November 27, 1992, 17 TexReg 8010; amended to be effective May 12, 1993, 18 TexReg 2799; amended to be effective June 28, 1993, 18 TexReg 3814; amended to be effective April 24, 1995, 20 TexReg 2709; amended to be effective May 30, 1995, 20 TexReg 3722; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective March 6, 1996, 21 TexReg 2400.

Cross Reference: This Section cited in 30 TAC §332.3, (relating to Applicability); 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335.10, (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardo); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.212, (relating to Standards Applicable to Generators and Transporters of Materials Used in a Manner That Constitutes Disposal); 30 TAC §335.213, (relating to Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate); 30 TAC §335.214, (relating to Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.323, (relating to Generation Fee Assessment); 30 TAC §335.411, (relating to General Requirements for Transporters); 30 TAC §335.501, (relating to Purpose, Scope, and Applicability); 30 TAC §335.502, (relating to Conversion to New Waste Notification and Classification System).

§ 335.7. Bond or Other Financial Assurance Required

Authority to store, process, or dispose of industrial solid waste or municipal hazardous waste pursuant to a permit issued by the commission is contingent upon the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director, in an amount specified in the permit, which provides for the closing of the solid waste storage, processing, or disposal facility in accordance with the permit issued for the facility and all other rules of the commission. The commission may require the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director for the closing of any solid waste facility exempt from the requirement of a permit under this chapter, but subject to the requirement of a permit under the Texas Water Code, Chapter 26. Persons storing, processing, or disposing of hazardous waste are subject to further requirements concerning financial assurance and closure and post-closure contained in Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

Source: The provisions of this §335.7 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective January 5, 1988, 12 TexReg 2335.

§ 335.8. Closure and Remediation

~~(a) Applicability. The regulations in this section~~ are effective on June 28, 1993. The regulations in this section apply to persons who undertake the closure of facilities used for the storage, processing, or disposal of industrial solid waste or municipal hazardous waste. The regulations in this section also apply to persons who undertake the remediation of contaminated media resulting from unauthorized discharges from such facilities, either as part of closure or at any time before or after closure. The regulations in this section also apply to persons who undertake remediation of areas that are not otherwise designated as a facility but that contain unauthorized discharges of industrial solid waste or municipal hazardous waste. The regulations of this subsection, in addition to other applicable rules, permits, or orders, establish the obligation for persons to perform closures or remediations for facilities or areas containing industrial solid and municipal hazardous waste and further specify the mechanism to evaluate such closures or remediations. The obligation to perform remediations for unauthorized discharges of contaminants under the state superfund and spill response programs occurs through the application of the commission's rules and statutes pertaining to those programs; however, once such obligation has occurred the regulations in this section will be used to specify the mechanism to evaluate remediation of unauthorized discharges of contaminants subject to those programs. The regulations in this section supplement but do not replace any requirements for closure or remediation specified in the regulations for the programs subject to these rules and shall apply as specified in paragraphs (1)-(6) of this subsection.

(1) Persons shall complete notification and response actions for spills in accordance with the Texas Water Code, §26.039 and §26.261, and the administrative and procedural requirements of the commission to carry out the Texas Hazardous Substance Spill Prevention and Control Act. This section applies to spills when the response actions do not result in remediation within the timeframes specified by the commission's spill ~~response program. In such circumstances the~~

~~person shall submit a plan in accordance with~~ subsection (b) of this section.

(2) This section applies to remediations performed under the state superfund program in accordance with Subchapter K of this chapter (relating to Hazardous Substance Facilities Assessment and Remediation) with the exception that information, including a baseline risk assessment, shall be provided and potential remedies shall be evaluated in response to Subchapter K of this chapter rather than the requirements of subsections (c) and (d) of this section, §335.553 of this title (relating to Required Information), and §335.562 of this title (relating to Remedy Evaluation Factors for Risk Reduction Standard Number 3). Also, under the state superfund program, persons shall determine media cleanup levels assuming future residential land use unless the person demonstrates to the satisfaction of the executive director using the provisions of §335.563(e) of this title (relating to Media Cleanup Requirements for Risk Reduction Standard Number 3) that an alternative land use is more ~~appropriate.~~

(3) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste at a facility permitted under §335.2(a) of this title (relating to Permit Required) shall, unless specifically modified by other order of the commission, close the facility in accordance with the closing provisions of the permit.

(4) Any person who stores, processes, or disposes of hazardous waste is also subject to the applicable provisions relating to closure and post-closure in Subchapters E and F of this chapter (relating to Interim Standards for Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, respectively).

~~(5) Persons who have received approval of~~ closure or remediation plans by the executive director and have either completed or not completed the action prior to the effective date of this section may either maintain or complete the action, as applicable, according to the approved plan and are not subject to the requirements of this section unless a substantial change in circumstances develops at the facility or area which results in an unacceptable threat to human health or the environment as described in ~~subsection (b)(5) of this section. Plans or reports submitted but not approved prior to the effective~~ date of this section will be reviewed according to the regulations in effect at the time of document submittal. If the executive director denies approval of the plan or report under those regulations for reasons of technical inadequacy, the person must then comply with the requirements of this section upon receipt of written notice from the executive director that the plan or report is not approved. Closure plans approved as part of an industrial solid or municipal hazardous waste permit which was issued prior to the effective date of this section but not implemented at the time of permit renewal are subject to review for compliance with this section as part of the permit renewal process. Persons may resubmit such plans or reports that they have revised voluntarily to conform with the requirements of this section, unless such resubmittal would result in noncompliance with a previously approved or imposed schedule of compliance.

(6) The requirements of this section do not apply to substances discharged or spilled from storage tanks regulated by Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(b) Closure and remediation obligations. Persons identified in subsection (a) of this section have the obligation to conduct the activities described in paragraphs (1)-(4) of this subsection when performing a closure or remediation. Upon receipt of approval by the executive director of reports demonstrating compliance with all applicable requirements, the person has completed these obligations unless a substantial change in circumstances results in an unacceptable risk to human health or the environment as described in paragraph (5) of this subsection.

(1) Notify the executive director in writing of any closure or remediation activities as is further specified in subsection (c) of this section.

(2) Perform closure or remediation activities at the facility or area of unauthorized discharge which meet one or more of the risk reduction standards specified in subparagraphs (A)-(C) of this paragraph. Unless the requirement to close a waste management facility is specified by other rule, permit, or order, the person will determine the time for initiation of closure. The timely remediation of unauthorized discharges resulting from operation of a waste management unit does not compel the closure of the unit unless closure ~~is a necessary part of the remedy to achieve~~

protection of human health and the environment:

(A) Risk Reduction Standard Number 1. Closure/remediation to background—to remove and/or decontaminate all waste, waste residues, leachate, and contaminated media to background levels unaffected by waste management or industrial activities as further specified in §335.554 of this title (relating to Attainment of Risk Reduction Standard Number 1); or

(B) Risk Reduction Standard Number 2. Closure/remediation to health-based standards and criteria—to remove and/or decontaminate all waste, waste residues, leachate, and contaminated media to standards and criteria such that any substantial present or future threat to human health or the environment is eliminated as further specified in §335.555 of this title (relating to Attainment of Risk Reduction Standard Number 2); or

(C) Risk Reduction Standard Number 3. Closure/remediation with controls—to remove, decontaminate, and/or control all waste, waste residues, leachate, and contaminated media to levels and in a manner such that any substantial present or future threat to human health or the environment is eliminated or reduced to the maximum extent practicable, as further specified in §335.561 of this title (relating to Attainment of Risk Reduction Standard Number 3).

(3) Demonstrate in writing to the executive director that closure or remediation has been completed as is further specified in subsection (d) of this section.

(4) Perform any necessary post-closure care and deed certification or recordation activities as required by Subchapter S of this chapter (relating to Risk Reduction Standards).

(5) Respond on a continuing basis pursuant to paragraphs (1)-(4) of this subsection in the event that a substantial change in circumstances at the facility or area results in an unacceptable threat to human health or the environment. In response to these substantial changes in circumstances, the person shall comply with this subsection utilizing the then-prevailing criteria and perform such actions as necessary to provide protection of human health and the environment. A substantial change in circumstance can include, but is not limited to, the situations described in subparagraphs (A)-(D) of this paragraph:

(A) a failure of institutional or engineering controls to prevent or mitigate exposure at the approved performance level;

(B) a change in land use from nonresidential to residential; or

(C) an actual exposure condition is determined to be occurring at levels not protective of human health or the environment. For purposes of this subparagraph, changes made to Subchapter S of this chapter (relating to Risk Reduction Standards) in response to periodic reviews of the general procedures specified to generate numeric cleanup levels, or in response to annual revisions of Appendix II of Subchapter S to reflect new toxicity data, do not constitute a substantial change in circumstances, unless these changes are of such magnitude to present an unacceptable threat to human health or the environment when evaluated for future exposure conditions based on site-specific considerations; or

(D) new information indicates that the contamination at the facility or area was not sufficiently characterized such that an unacceptable threat to human health or the environment continues to exist.

(c) Notification and initiation requirements.

(1) A person who intends to perform any activity of closure or remediation in accordance with subsection (b) of this section shall determine the risk reduction standard(s) to be attained. The person shall notify the executive director and the commission's office in the district where the facility or area is located in writing of the following information at least 10 days prior to conducting the activity:

(A) the facility or area to be subject to closure or remediation activities;

(B) the risk reduction standard(s) to be attained; and

(C) the estimated time necessary to complete the activity.

(2) After performing notification in accordance with paragraph (1) of this subsection, the person may initiate the actions necessary to attain Risk Reduction Standard Numbers 1 or 2 without prior approval by the executive director, unless such approval is required by other regulation, order, or permit of the commission. Any plan submitted for prior approval by the executive director shall contain the information specified

~~in §335.553(a) of this title (relating to Required~~ Information).

(3) If the person intends to attain Risk Reduction Standard Number 3, or determines that Standard Numbers 1 or 2 have not been attained in a self-implemented action, the person shall submit to the executive director the information specified in §335.553(b) of this title (relating to Required Information) for approval prior to beginning, or continuing, as applicable, the closure or remediation activities.

(4) The person may include one or more waste management units or areas in a submittal for the purpose of responding to this subsection and subsection (d) of this section.

(5) Notwithstanding any other requirement, the person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the closure or remediation is compliant with this section.

(d) Demonstration of conformance with risk reduction standards. Upon completion of a closure or remediation, the person shall demonstrate in a form acceptable to the executive director that the activity meets the intended risk reduction standards and any applicable closure criteria listed or referenced in this chapter. Any submittal to the executive director in response to this subsection shall be in the form of a plan or report that contains the information specified in §335.553 of ~~this title (relating to Required Information).~~

Source: The provisions of this §335.8 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective June 28, 1993, 18 TexReg 3814.

Cross References: This Section cited in 30 TAC §335.551, (relating to Purpose, Scope, and Applicability).

§ 335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators

(a) Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous waste or industrial solid waste shall comply with the following.

(1) The generator shall keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal and which, at a minimum, includes the information described in subparagraphs (A)-(G) of this paragraph. These records may be maintained in any format provided they are retrievable and easy to copy. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

(A) the description, character, and classification of each waste, and any changes and additional information required under §335.6(c) and (d) of this title (relating to Notification Requirements);

(B) the quantity generated;

(C) except for conditionally exempt small quantity generators regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), the quantity held in on-site storage as of December 31 of each calendar year;

(D) the quantity processed or disposed of at each on-site facility unit during the calendar year;

(E) the method of storage, processing, or disposal as described by codes listed on the form or instructions;

(F) the quantity shipped off-site for storage, processing, or disposal each calendar year, including the name, address, and location of each off-site facility and transporter receiving shipments;

(G) the location of all hazardous waste accumulation areas, situated at or near any point of generation, where hazardous wastes under the control of the operator of the process generating the wastes are placed in containers and initially accumulated without a permit or interim status in accordance with §335.69(d) of this title (relating to Accumulation Time).

(2) The generator shall submit to the Texas Natural Resource Conservation Commission on or before January 25 of each year a complete and correct annual waste summary detailing the management of each hazardous waste and Class 1 waste generated on site during the previous calendar year. The annual waste summary shall be submitted in a form provided or approved by the executive director. Upon written request by the generator, the executive director may authorize an extension to the report due date.

(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) during the year, total on-site accumulation of hazardous waste did not equal or exceed 1,000 kilograms;

(B) no acute hazardous waste was generated or accumulated during the year exceeding the limits specified in §335.78(e)(1) and (2) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators);

(C) a total of less than 1,200 kilograms of hazardous waste, and a total of less than 1,200 kilograms of Class 1 nonhazardous waste (2,400 kilograms or less of hazardous waste plus Class 1 nonhazardous waste combined) was generated during the year.

(4) Generators who are regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) and also meet the requirements of paragraph (3) of this subsection are not required to submit an annual summary.

~~(b) A generator who ships his hazardous waste~~ off-site must also include the information specified in §335.71 of this title (relating to Biennial Reporting). Any generator who stores, processes, or disposes of hazardous waste on-site shall also submit an annual report in accordance with the requirements of §335.114 of this title (relating to Reporting Requirements).

Source: The provisions of this §335.9 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 27, 1992, 17 TexReg 8010; amended to be effective February 4, 1994, 19 TexReg 509; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.71, (relating to Biennial Reporting); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.329, (relating to Records and Reports); 30 TAC §335.474, (relating to Source Reduction and Waste Minimization Plans); 30 TAC §335.476, (relating to Reports and Recordkeeping); 30 TAC §335.513, (relating to Documentation Required)

§ 335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

~~(a) Except as provided in subsection (g) of this~~ section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste process, storage, or disposal facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1) for generators of industrial nonhazardous Class 1 waste in a quantity greater than 100 kilograms per month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste storage, processing, or disposal facility in Texas, a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311, and, if necessary, TNRCC-0311B is prepared;

~~(2) the generator is either an industrial generator~~ that generates less than 100 kilograms of nonhazardous Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title;

(3) for generators of hazardous waste or Class 1 waste generated in Texas for consignment to another state the consignment state's manifest, if provided, or a Texas state manifest if the consignment state does not provide a manifest, is prepared, ~~unless the generator is identified in paragraph (2) of this section~~;

(4) for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a manifest from the primary exporter's state if that state supplies the manifest form and requires its use or a manifest

from any source if the primary exporter's state does not supply the manifest form; and

~~(5) a generator designates on the manifest one~~ facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternative facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Special Handling Instructions and Additional Information." If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste;

(6) for shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(b) The manifest shall contain the following information.

(1) The manifest shall contain the generator's United States Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest by the generator. This requirement does not apply if the waste being shipped is non-hazardous or if the generator is a conditionally exempt small quantity generator of hazardous waste.

(2) The manifest shall contain the total number of pages used to complete the manifest, plus the number of continuation sheets, if any (page 1 of ____).

(3) The manifest shall contain the name, mailing address, and telephone number of the generator.

(4) The manifest shall contain the telephone number where an authority agent of the generator may be reached in the event of an emergency.

~~(5) The manifest shall contain the generator's~~ Texas Natural Resource Conservation Commission (TNRCC) registration and/or permit number. Conditionally exempt small quantity generators (CESQGs) of hazardous waste or industrial generators of less than 100 kg per month of nonhazardous Class 1 waste and less than CESQG limits of hazardous waste that are exempt from manifesting may voluntarily choose to manifest their hazardous or Class 1 industrial nonhazardous waste. Such exempt generators may utilize the letters "CESQG" for their TNRCC generator registration number.

(6) The manifest shall contain the first transporter's company name.

(7) The manifest shall contain the first transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is non-hazardous or the transporter is a conditionally exempt small quantity generator transporting only his own hazardous waste.

~~(8) The manifest shall contain the first trans~~porter's state registration number. Conditionally exempt small quantity generators who are not required to notify of their transportation activities as specified in §335.6(d) of this title (relating to Notification Requirements) may use the letters "CESQG" as the TNRCC transporter's registration number when transporting their own hazardous or Class 1 nonhazardous waste.

(9) The manifest shall contain a telephone number where an authorized agent of first transporter may be reached in the event of an emergency.

(10) The manifest shall contain the second transporter's company name.

(11) The manifest shall contain the second transporter's 12-digit identification number. This requirement does not apply if the waste being shipped is non-hazardous.

(12) The manifest shall contain the second transporter's state registration number.

(13) The manifest shall contain a telephone number where an authorized agent of the second transporter may be reached in the event of an emergency.

(14) The manifest shall contain the company name and site address of the facilities designated to receive the waste identified on the manifest and an alternate facility, if designated. Except as provided otherwise in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, generators shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an

approved state hazardous waste program administered in lieu thereof.

(15) The manifest shall contain the designated facility's EPA 12-digit identification number; however, this requirement does not apply if the waste being shipped is non-hazardous.

(16) The manifest shall contain the Texas Natural Resource Conservation Commission's or Texas Department of Health's state storage, processing, or disposal facility registration and/or permit number.

(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other waste, as required by United States Department of Transportation (DOT) regulations (49 Code of Federal Regulations §172.201(a)(1)), the Texas Natural Resource Conservation Commission has added a hazardous materials (HM) column on the manifest before the United States Department of Transportation description. When a waste shipment consists of both federally regulated materials and state-regulated wastes, the hazardous materials (HM) column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials.

(18) The manifest shall contain the United States Department of Transportation proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 Code of Federal Regulations Parts 171-177. If the shipment contains non-hazardous waste solely regulated by the Texas Natural Resource Conservation Commission, then the Texas Natural Resource Conservation Commission waste classification code description should be used. If additional space is needed for waste descriptions, enter these additional descriptions in Item 28 on the continuation sheet.

(19) The manifest shall contain the number of containers for each waste and the appropriate abbreviation from Table 1 in §335.30 of this title (relating to Appendix I) for the type of container.

(20) The manifest shall contain the total quantity of each waste described on each line.

(21) The manifest shall contain the unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 Code of Federal Regulations, Parts 264 or 265.

(22) The manifest shall contain the Texas Natural Resource Conservation Commission waste classification code assigned to the waste by the generator.

(23) The manifest shall contain a certification by the generator stating: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations, including applicable state regulations. if I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; or, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

(24) If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space provided below the word "highway." If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space provided below the word "highway."

(c) The manifest shall consist of at least the number of copies which will provide the generator, each transporter, the owner or operator of the storage, processing, or disposal facility and in the case of hazardous waste exports, ~~the United States customs official,~~ with one copy each for their records and another copy to be returned to the generator.

(d) At the time of waste transfer, the generator shall:

(1) sign the manifest by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy, in accordance with §335.123(a) of this title (relating to Recordkeep-

ing and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste); and

(4) give the transporter the remaining copies of the manifest.

(e) For shipments of hazardous waste or Class I waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(f) For rail shipments of hazardous waste or Class I waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) the next nonrail transporter, if any;

(2) the designated facility if transported solely by rail; or

(3) the last rail transporter to handle the waste in the United States if exported by rail.

~~(g) No manifest is required for the shipment of~~ Class I waste which is not hazardous waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered another source with respect to other plants or operations ~~owned by the same person.~~

Source: The provisions of this §335.10 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 27, 1992, 17 TexReg 8010; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective April 24, 1995, 20 TexReg 2709; amended to be effective March 1, 1996, 21 TexReg 1425.

Cross References: This Section cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.11, (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste); 30 TAC §335.12, (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); 30 TAC §335.13, (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.61, (relating to Purpose, Scope and Applicability); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.409, (relating to General Shipping, Manifesting, Recordkeeping, and Reporting Requirements); 30 TAC §335.502, (relating to Conversion to New Waste Notification and Classification System); 30 TAC §335.503, (relating to Waste Classification and Waste Coding Required).

§ 335.11. Shipping Requirements for Transporters of Hazardous Waste or Class I Waste

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste) to an off-site storage, processing, or disposal facility, unless the transporter:

(1) obtains a manifest completed by the generator or primary exporter where appropriate in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste);

(2) upon receipt and prior to shipment, signs and dates the manifest, acknowledging the acceptance of waste from the generator or primary exporter where appropriate;

(3) returns a signed copy to the generator or primary exporter where appropriate before leaving the generator's property; and

(4) in the case of hazardous waste exports, knows that the shipment conforms to the requirements set forth in the regulations contained in 40 Code of Federal Regulations §263.20(a), which are in effect as of November 8, 1986.

(b) The transporter shall ensure that the manifest accompanies the municipal hazardous waste or Class I waste.

(c) No transporter may cause, suffer, allow, or permit the delivery of a shipment of hazardous waste or Class I waste to another transporter designated on the manifest, unless the transporter:

(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the manifest;

(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste);

(3) gives the remaining copies of the manifest to the accepting transporter; and

(4) in the case of hazardous waste exports, ensures that a copy of the EPA acknowledgment of consent also accompanies the hazardous waste.

~~(d) No transporter may cause, suffer, allow, or permit the delivery of a shipment of municipal hazardous waste or Class I waste to a storage, processing, or disposal facility, unless the transporter:~~

~~(1) obtains the date of delivery and the handwritten signature on the manifest of the owner or operator of the facility designated on the manifest;~~

~~(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste); and~~

~~(3) gives the remaining copies of the manifest to the owner or operator of the facility designated on the manifest.~~

(e) The requirements of subsections (b)-(d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;

(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste;

(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest of the shipping paper;

(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste).

(f) For shipments involving rail transportation, the requirements of subsections (b)-(e) of this section do not apply and the following requirements do apply.

(1) When accepting Class I waste from a nonrail transporter, the initial rail transporter must:

(A) sign and date, the manifest acknowledging acceptance of the waste;

(B) return a copy of the manifest to the nonrail transporter;

(C) forward at least three copies of the manifest to:

(i) the next nonrail transporter, if any;

(ii) the designated facility, if the shipment is delivered to that facility by rail; or

(iii) the last rail transporter designated to handle the waste in the United States;

(D) retain one copy of the manifest and rail shipping paper in accordance with § 335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste).

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for hazardous waste exports, and EPA acknowledgment of consent accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering Class I waste or municipal hazardous waste to the designated facility, a rail transporter must:

(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and

(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste).

(4) When delivering hazardous waste or Class I waste to a nonrail transporter, a rail transporter must:

(A) obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and

(B) retain a copy of the manifest in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to

Transporters of Hazardous Waste or Class I Waste).

(5) Before accepting municipal hazardous waste or Class I waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste or Class I waste out of the United States shall:

(1) indicate on the manifest the date the municipal hazardous waste or Class I waste left the United States under the item labeled "special handling instructions and additional information";

(2) sign the manifest and retain one copy in accordance with § 335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste);

(3) return a signed copy of the manifest to the generator or primary exporter where appropriate; and

(4) give a copy of the manifest to a United States customs official at the point of departure from the United States.

(h) The transporter must deliver the entire quantity of municipal hazardous waste or Class I waste which he has accepted from a generator or a transporter to:

(1) the designated facility listed on the manifest;

(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;

(3) the next designated transporter; or

(4) the place outside the United States designated by the generator.

(i) If the transporter cannot deliver the waste in accordance with subsection (h) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

Source: The provisions of this §335.11 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §335.14, (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.411, (relating to General Requirements for Transporters).

§ 335.12. Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities

(a) No owner or operator of a storage, processing, or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste), for off-site storage, processing, or disposal unless:

(1) a manifest accompanies the shipment which designates that facility to receive the waste; and

(2) the owner or operator signs the manifest and immediately gives at least one copy of the signed manifest to the transporter; and

(3) retains one copy of the manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(4) within 30 days after the delivery, sends a copy of the manifest to the generator or primary exporter where appropriate; and

~~(5) in the case of hazardous waste exports, a~~ copy of the EPA acknowledgment ~~of consent~~ also accompanies the ~~waste and~~ the owner or operator ~~has no knowledge~~ that the shipment does not ~~conform to the EPA acknowledgment of consent.~~

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class I waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall:

(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste or Class I waste covered by the manifest or the shipping paper was received;

(2) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(3) within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the

shipping paper signed and dated to the generator; and

(4) retain at the facility a copy of each shipping paper and manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(c) If a facility receives hazardous waste or Class I waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) Manifest discrepancies are differences between the quantity or type of hazardous waste or Class I waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste or Class I waste a facility actually received. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:

(A) for bulk weight, variations greater than 10% in weight; and

(B) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

Source: The provisions of this §335.12 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.41, (relating to Purpose, Scope, and Applicability); 30 TAC §335.47, (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.223, (relating to Additional Permit Standards for Burners); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.251, (relating to Applicability and Requirements); 30 TAC §335.412, (relating to General Requirements for Processing, Storage, or Disposal Facilities).

§ 335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

(a) The generator or primary exporter shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for a minimum of three years from the date of shipment by the generator or primary exporter.

~~(b) Generators or primary exporters who ship to~~ other states, or import shipments from outside the United States through Texas to other states, or export hazardous waste to a foreign country, shall prepare a complete and correct waste shipment summary from the manifests. The waste shipment summary shall be prepared in a form provided or approved by the executive director and submitted to the Texas Natural Resource Conservation Commission on or before the 25th of each month for shipments originating during the previous month. The generator or primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. A generator or primary exporter required to comply with this subsection shall prepare and submit a waste shipment summary for only those months in which shipments were actually made. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.

~~(c) A generator who does not receive a copy of~~ the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.

~~(d) A generator must submit an exception report~~ to the commission if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. Primary exporters of hazardous waste must submit an exception report to the executive director as set forth in §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments). The exception report must be retained by the generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(f) The requirements of subsections (c) and (d) of this section do not apply to generators generating hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78(e)(1) or (2) of this title (relating to Conditionally Exempt Small Quantity Generators).

~~(g) Primary exporters of hazardous waste must~~ submit an annual report in accordance with the requirements set out in the regulations contained in 40 Code of Federal Regulations §262.56, which ~~are in effect as of November 8, 1986.~~

Source: The provisions of this §335.13 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 4, 1994, 19 TexReg 509.

Cross References: This Section cited in 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month); 30 TAC §335.329, (relating to Records and Reports).

§ 335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste

(a) A transporter of hazardous waste or Class I waste shall retain a copy of each manifest signed by the generator or, in the case of exports of hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of the initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class I waste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the hazardous waste or waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

Source: The provisions of this §335.14 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §335.11, (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.411, (relating to General Requirements for Transporters).

§ 335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities

~~This section applies to owners and operators that receive hazardous waste or Class 1 waste from off-~~

~~site sources or have notified that they intend to receive hazardous waste or Class 1 waste from off-site sources.~~

(1) The owner or operator of the storage, processing, or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator or primary exporter where appropriate.

~~(2) Except as provided in paragraph (6) of this~~ section, the owner or operator shall prepare a complete and correct monthly waste receipt summary for all hazardous waste or Class 1 waste shipments received. The monthly waste receipt summary shall be prepared in a form provided or approved by the executive director and submitted to the Texas Natural Resource Conservation Commission on or before the 25th of each month for wastes or manifests received during the previous month. (The appropriate abbreviations for method of storage, processing, and disposal of waste and for units of measure may be found on the form or accompanying instructions.) An owner or operator of a storage, processing, or disposal facility required to comply with this subsection shall prepare and submit a monthly waste receipt summary in each month even if no waste was ~~received.~~

~~(3) The owner or operator shall submit a re~~port on forms provided or approved by the executive director summarizing the types and volumes of any hazardous waste or Class 1 waste received without manifests, or, in the case of shipments by rail or water (bulk shipments), without shipping papers. This report shall be submitted within 15 days of receiving the waste, regardless of quantity, and shall include the following information:

(A) the EPA identification number (applicable to hazardous waste only), name, and address of the facility;

(B) the date the facility received the waste;

(C) the EPA identification number (applicable to hazardous waste only), name, and address of the generator and the transporter, if available;

(D) a description and the quantity of each hazardous waste or Class 1 waste the facility received which was not accompanied by a ~~manifest;~~

~~(E) the method of storage, processing, or~~ disposal for each hazardous waste or Class 1 waste;

(F) the certification signed by the owner or operator of the facility or his authorized representative; and

(G) a brief explanation of why the waste was unaccompanied by a manifest, if known.

(4) The owner or operator shall retain a copy of each summary required by paragraphs (2) and (3) of this subsection for a minimum of three years from the date of each summary.

(5) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(6) An owner or operator reclaiming hazardous wastes received from conditionally exempt small quantity generators is subject to the requirements of this section requiring completion of a monthly waste receipt summary, from his copy of all manifests received during the month, unless he has requested in writing a modification in the reporting requirements. A modification relieving the owner or operator of having to report each manifested shipment on the monthly waste receipt summary may be granted at the discretion of the executive director on a case-by-~~case basis.~~

Source: The provisions of this §335.15 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective February 4, 1994, 19 TexReg 509; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.12, (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.41, (relating to Purpose, Scope and Applicability); 30 TAC §335.47, (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule); 30 TAC §335.114, (relating to Reporting Requirements); 30 TAC §335.115, (relating to Additional Reports); 30 TAC §335.154, (relating to Reporting Requirements for Owners and Operators); 30 TAC §335.155, (relating to Additional Reports); 30 TAC §335.223, (relating to Additional Permit Standards for Burners); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.329, (relating to Records and Reports); 30 TAC §335.412, (relating to General Requirements for Processing, Storage, or Disposal Facilities).

§ 335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials

For the purposes of the definition of solid waste in §335.1 of this title (relating to Definitions) and

§335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) a spent material is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) sludge has the same meaning used in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2;

(3) a by-product is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form in which it is produced by the process;

(4) a material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents;

(5) a material is used or reused if it is either:

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(B) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment);

(6) scrap metal is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wires) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled;

(7) a material is recycled if it is used, reused, or reclaimed;

(8) a material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 Code of Federal Regulations §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

Source: The provisions of this §335.17 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692.

Cross References: This Section cited in 30 TAC §335.18, (relating to Variances from Classification as a Solid Waste); 30 TAC §335.241, (relating to Applicability and Requirements); 30 TAC §335.322, (relating to Definitions).

§ 335.18. Variances from Classification as a Solid Waste

In accordance with the standards and criteria in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler), the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original production process in which they were generated; or

(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

Source: The provisions of this §335.18 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective March 1, 1996, 21 TexReg 1425.

§ 335.19. Standards and Criteria for Variances from Classification as a Solid Waste

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following standards and criteria:

(1) the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss;

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) the prevalence of the practice on an industry-wide basis;

(3) the extent to which the material is handled before reclamation to minimize loss;

(4) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(5) the location of the reclamation operation in relation to the production process;

(6) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(7) whether the person who generates the material also reclaims it;

(8) other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(1) the degree of processing the material has undergone and the degree of further processing that is required;

(2) the value of the material after it has been reclaimed;

(3) the degree to which the reclaimed material is like an analogous raw material;

(4) the extent to which an end market for the reclaimed material is guaranteed;

(5) the extent to which the reclaimed material is handled to minimize loss;

(6) other relevant factors.

Source: The provisions of this §335.19 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective March 1, 1996, 21 TexReg 1425.

Cross References: This Section cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.18, (relating to Variances from Classification as a Solid Waste); 30 TAC §335.21, (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler).

§ 335.20. Variance To Be Classified as a Boiler

In accordance with the standards and criteria in §335.1 of this title (relating to Definitions) (definition of boiler), and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler), the executive director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in §335.1 of this title

(relating to Definitions), after considering the following criteria:

(1) the extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(2) the extent to which the combustion chamber and energy recovery equipment are of integral design;

(3) the efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

(4) the extent to which exported energy is utilized;

(5) the extent to which the device is in common and customary use as a boiler functioning primarily to produce steam, heated fluids, or heated gases; and

(6) other factors, as appropriate.

Source: The provisions of this §335.20 adopted to be effective May 29, 1986, 11 TexReg 2335.

Cross References: This Section cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.21, (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler).

§ 335.21. Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

(1) The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and §335.20 of this title (relating to Variance to be Classified as a Boiler).

(2) The executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the hearing (if any). Any person affected by a final decision of the executive director may petition the commission to review the decision. Any person affected by the final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures After Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a.

Source: The provisions of this §335.21 adopted to be effective May 29, 1986, 11 TexReg 2335.

Cross References: This Section cited in 30 TAC §335.18, (relating to Variances from Classification as a Solid Waste); 30 TAC §335.20, (relating to Variance To Be Classified as a Boiler).

§ 335.22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis

The commission may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) should be regulated under §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. The procedures for this decision are set forth in §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities). In making this decision, the commission will consider the following factors:

(1) the types of materials accumulated or stored and the amounts accumulated or stored;

(2) the method of accumulation or storage;

(3) the length of time the materials have been accumulated or stored before being reclaimed;

(4) whether any contaminants are being released into the environment, or are likely to be so released; and

(5) other relevant factors.

Source: The provisions of this §335.22 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 20, 1996, 21 TexReg 10983.

§ 335.23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities

The commission will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) under the provisions of §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), rather than under the provisions governing Recyclable Materials Utilized for Precious Metal Recovery under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) If a generator is accumulating the waste, the commission will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste). The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commission will hold a public hearing. The commission will provide notice of the hearing to the public and allow public participation at the hearing. The commission will issue a final order after the hearing stating whether or not compliance with Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste) is required. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 80 of this title (relating to Contested Case Hearings) and the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

~~(2) If the person is accumulating the recyclable~~ material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapter ~~305 of this title (relating to Consolidated Permits) and Chapter 1 of this title (relating to Purpose of~~ Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings). The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reasons for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public ~~comment period and in any subsequent hearing.~~

Source: The provisions of this §335.23 adopted to be effective May 29, 1986, 11 TexReg 2335; amended to be effective September 1, 1986, 11 TexReg 3692; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §335.22, (relating to Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis).

§ 335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d)-(f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) and (i) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to

Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings):

(1) recyclable materials used in manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B-I and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions) or Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:

(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR §§262.53, 262.56(a)(1)-(4) and (6) and (b), and 262.57, which are in effect as of November 8, 1986, export such materials only upon such consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, which are in effect as of November 8, 1986, and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;

(B) transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment, and must ensure that it is delivered to the facility designated by the person initiating the shipment;

(2) used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

(3) scrap metal;

(4) fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(5) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;

(6) the following hazardous waste fuels:

(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel

meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11; and

(7) petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 CFR Part 261, Subpart C.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section.

~~(e) Owners or operators of facilities that store~~ recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings), and the notification requirements under §335.6 of this title (relating to Notification Requirements), except ~~as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from regulation.~~

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a)-(c) of this section:

(1) notification requirements under §335.6 of this title (relating to Notification Requirements);

(2) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

~~(g) Except as provided in subsection (h) of this~~ section, recyclable materials (excluding those listed in subsection (c)(1) and (3)-(7) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9-335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable.

(h) Industrial solid wastes that are nonhazardous recyclable materials; and recyclable materials listed in subsection (b)(4) and subsection (c)(2) and (3) of this section remain subject to the requirements of §335.4 of this title (relating to General Prohibitions) and §335.6 of this title (relating to Notification Requirements). Such wastes may also be subject to the requirements of §§335.10-335.15 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of ~~Hazardous Waste; Recordkeeping Requirements~~

~~Applicable to Transporters of Hazardous Waste or~~ Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(9) other relevant factors.

(i) Except as provided in the Solid Waste Disposal Act, Health and Safety Code, §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;

(2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;

(3) whether the management of recyclable materials and nonhazardous recyclable materials is ~~segregated within the facility;~~

~~(4) the waste's toxicity, corrosivity, flammability~~, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(7) the potential for the objectionable constituent to degrade into harmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

~~(12) other relevant factors.~~

Source: The provisions of this §335.24 adopted to be effective September 1, 1986, 11 TexReg 3693; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335.17, (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.22, (relating to Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis); 30 TAC §335.23, (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities); 30 TAC §335.41, (relating to Purpose, Scope and Applicability); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.322, (relating to Definitions).

~~§ 335.28.~~ Adoption of Memoranda of Understanding by Reference

The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Water Commission, Legal Division, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8078.

(1) the memorandum of understanding (effective July 14, 1987) between the attorney general ~~of Texas and the Texas Water Commission~~

~~which concerns public participation in the state~~ hazardous waste enforcement process;

(2) the memorandum of understanding (effective September 1, 1987) between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of radioactive mixed wastes; and

(3) the memorandum of understanding (effective December 1, 1987) between the Railroad Commission of Texas, the Texas Department of Health, and the Texas Water Commission, which concerns the division of jurisdiction among the agencies over wastes that result from or are related to activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil.

Source: The provisions of this §335.28 adopted to be effective ~~December 1, 1987, 12 TexReg 4193.~~

§ 335.29. Adoption of Appendices by Reference

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

(1) Appendix I—Representative Sampling Methods;

(2) Appendix II—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) (as amended through August 31, 1993, at 58 FedReg 46040);

(3) Appendix III—Chemical Analysis Test Methods (as amended through August 31, 1993, at 58 FedReg 46040);

(4) Appendix VII—Basis for Listing Hazardous Waste (as amended through October 15, 1992, at 57 FedReg 47376);

(5) Appendix VIII—Hazardous Constituents (as amended through June 20, 1994, at 59 FedReg 31551); and

(6) Appendix IX—Wastes Excluded Under §260.20 and §260.22.

Source: The provisions of this §335.29 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective March 18, 1991, 16 TexReg 1369; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983.

§ 335.30. Appendix I

The following appendix will be used for the purposes of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General).

When using the Uniform Waste Manifest for rail or water (bulk shipment) or international shipments refer to the applicable TWC regulations

REPORT SPILLS AND/OR DISCHARGES TO THE TEXAS SPILL RESPONSE CENTER AT 512/463-7727 (24 HOURS)

INSTRUCTIONS TO GENERATOR Please Type or Print Clearly)

(1) Enter the Generator's U S EPA twelve digit identification number and the unique five digit number assigned to this manifest by the generator if you are shipping hazardous waste

(2) Enter the total number of pages used to complete this manifest

(3) Enter the company name and mailing address

(4) Provide a phone number where an authorized agent of your firm may be reached in the event of an emergency

(5) Enter the company name of the first transporter and their U S EPA ID Number

(6) If applicable, enter the company name of the second transporter and their U S EPA ID Number If more than two transporters are used enter each additional transporter s information on the Continuation Sheet (EPA form 8700-22A)

(7) Enter the company name, site address and U S EPA ID Number of the facility designated to receive the waste listed on this manifest

(8) **COMPLETE ALL STATE OF TEXAS INFORMATION A THROUGH H. IN THE SHADED AREAS**

(9) Complete the waste description table as follows

(A) ITEM 11A—When shipping an EPA DOT regulated hazardous waste or material in conjunction with solely state regulated waste enter an "x" in the HM box before each EPA DOT regulated waste/material description

(B) ITEM 11—Enter the U S DOT Proper Shipping Name Hazard Class, and ID Number (UN/NA) for each waste identified If it is a Class I nonhazardous waste use the Texas Waste Code description

(C) ITEM 12—Enter the number of containers for each waste and the appropriate abbreviation for type located in Subchapter A of the TDWP Industrial Solid Waste Rules

(D) ITEM 13—Enter the total quantity of waste described on each line

(E) ITEM 14—Enter the appropriate letter from the table below for the unit of measure

G = Gallons (liquids only)	L = Liter (liquids only)
P = Pounds	K = Kilograms
T = Tons (2000 lbs	M = Metric Tons (1000 kg)
Y = Cubic Yards	N = Cubic Meters

(F) ITEM I—Enter the appropriate TWC State Waste Code for each waste you are shipping

(10) The Generator must read sign (by hand) and date the certification statement If a mode other than highway is used the word "highway" should be lined out and the appropriate mode (rail, water or air) inserted in the space below In signing the waste minimization certification statement, those generators shipping hazardous waste who have not been exempted by statute or regulation from the duty to make a waste minimization certification are also certifying that they have complied with the waste minimization requirements

(11) The manifest must be signed and dated by the first transporter in the presence of the Generator If more than one transporter is to be used the Generator must provide additional copies for their use

*12 Generator retains green copy sending remaining copies with the driver

INSTRUCTIONS FOR THE TRANSPORTER (Please Type or Print Clearly)

(1) As driver of the transport vehicle you are responsible for ensuring that all waste received by you arrives at the specified destination.

(2) Sign and date the space provided certifying the waste amounts in **PART I** were received for transport **NOTE**: If you are unable to carry out the delivery of the shipment as specified, dial the emergency phone numbers given in **PART I** notifying the **GENERATOR**

(3) Upon delivery of the shipment, the **TSD** Facility Owner/Operator is to sign for the shipment in your presence and fill in date received

*(4) Separate the yellow copy and retain for your records Leave the remaining copies with the **TSD** Facility Owner/Operator

INSTRUCTIONS TO TREATMENT, STORAGE AND DISPOSAL (TSD) FACILITY OWNER/OPERATOR (Please Type or Print Clearly

(1) The authorized representative of the designated (or alternate) facility s owner or operator must note in **ITEM 19** any significant discrepancy between the waste described on the manifest and the waste actually received at the facility

(2) Enter date received and sign in the presence of the driver declaring receipt of the wastes and verifying the quantities in the table in **PART I**

(4) Retain the pink copy for your records and return the completed original (white) copy to the **GENERATOR**

* U S EPA and TWC regulations require that copies of this Uniform Hazardous Waste Manifest be retained for a period of three (3) years in your company records Do not send to TWC unless otherwise notified by these departments

INDUSTRIAL & MUNICIPAL HAZARDOUS WASTE **30 TAC § 335.30**

TEXAS WATER COMMISSION
P O Box 13087 Capitol Station
Austin, Texas 78711 3087

Please print or type (Form designed for use on elite (12 pitch) typewriter)

Form approved OMB No. 2050 0039 (Expires 7 31 92)

UNIFORM HAZARDOUS WASTE MANIFEST

1 Generator s US EPA ID No | Manifest Document No | 2 Page 1 of | Information in the shaded areas is not required by Federal law

3 Generator s Name and Mailing Address

A State Manifest Document Number

4 Generator s Phone ( )

B State Generator s ID

5 Transporter 1 Company Name | 6 US EPA ID Number

C State Transporter s ID

7 Transporter 2 Company Name | 8 US EPA ID Number

D Transporter s Phone

E State Transporter s ID

F Transporter s Phone

9 Designated Facility Name and Site Address | 10 US EPA ID Number

G State Facility s ID

H Facility s Phone

No	11 US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)	12 Containers No	Type	13 Total Quantity	14 Unit Wt Vol	Waste No
a						
b						
c						
d						

J Additional Descriptions for Materials Listed Above

K Handling Codes for Wastes Listed Above

15 Special Handling Instructions and Additional Information

16 **GENERATOR S CERTIFICATION** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.

Unless I am a small quantity generator who has been exempted by statute or regulation from the duty to make a waste minimization certification under Section 3002(b) of RCRA, I hereby certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of processing, storage or disposal currently available to me which minimizes the present and future threat to human health and the environment

Printed Typed Name | Signature | Month Day Year

17 Transporter 1 Acknowledgement of Receipt of Materials | Date

Printed Typed Name | Signature | Month Day Year

18 Transporter 2 Acknowledgement of Receipt of Materials | Date

Printed Typed Name | Signature | Month Day Year

19 Discrepancy Indication Space

20 Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19 | Date

Printed Typed Name | Signature | Month Day Year

EPA Form 8700-22 (Rev 4 88) Previous edition is obsolete White original Pink TSD Facility Yellow Transporter Green Generator s first copy
TC 0311 Rev 03 91 (2)

Please print or type (Form designed for use on elite 12 pitch typewriter)

Form approved OMB No. 2050 0404 Expires 7 31 86

UNIFORM HAZARDOUS WASTE MANIFEST *(Continuation Sheet)*

21 Generator's US EPA ID No | Manifest Document No | 22 Page | Information in the shaded areas is not required by Federal law

23 Generator's Name | L State Manifest Document Number | M State Generator's ID

24 Transporter ____ Company Name | 25 US EPA ID Number | N State Transporter's ID | O Transporter's Phone

26 Transporter ____ Company Name | 27 US EPA ID Number | P State Transporter's ID | Q Transporter's Phone

28A HM	28 US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)	29 Containers No	Type	30 Total Quantity	31 Unit Wt Vol	R Waste No
	a					
	c					
	c					
	g					
	e					
	f					
	g					
	h					

S Additional Descriptions for Materials Listed Above | T Handling Codes for Wastes Listed Above

32 Special Handling Instructions and Additional Information

33 Transporter ____ Acknowledgement of Receipt of Materials — Printed Typed Name | Signature | Date Month Day Year

34 Transporter ____ Acknowledgement of Receipt of Materials — Printed Typed Name | Signature | Date Month Day Year

35 Discrepancy Indication Space

EPA Form 8700 22 (3 84) White - origina Pink TSD Facility Yellow Transporter Green Generator's first copy

TWC-03116

Table 1

Types of Containers

DM = Metal drums, barrels, kegs
DW = Wooden Drums, barrels, kegs
DF = Fiberboard or plastic drums, barrels, kegs
TP = Tanks portable
TT = Cargo tanks (tank trucks)
TC = Tank cars
DT = Dump truck
CY = Cylinders
CM = Metal boxes, cartons, cases (including roll-offs)
CW = Wooden boxes, cartons, cases
CF = Fiber or plastic boxes, cartons, cases
BA = Burlap, cloth, paper or plastic bags.

Source: The provisions of this §335.30 adopted to be effective May 28, 1986, 11 TexReg 2335; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §335.10, (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardo); 30 TAC §335.175, (relating to Special Requirements for Bulk and Containerized Waste); 30 TAC §335.329, (relating to Records and Reports).

§ 335.31. Incorporation of References

When used in Chapter 335 of this title (Industrial Solid Waste and Municipal Hazardous Waste), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended and adopted in the Code of Federal Regulations through June 2, 1994, at 59 FedReg 28484.

Source: The provisions of this §335.31 adopted to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §335.125, (relating to Special Requirements for Bulk and Containerized Waste).

SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

Cross References: This Subchapter cited in 30 TAC §335.213, (relating to Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate); 30 TAC §335.214, (relating to Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal); 30 TAC §335.222, (relating to Management Prior to Burning); 30 TAC §335.251, (relating to Applicability and Requirements); 30 TAC §335.323, (relating to Generation Fee Assessment).

§ 335.41. Purpose, Scope and Applicability

(a) The purpose of this chapter is to implement a state hazardous waste program which controls from point of generation to ultimate disposal those wastes which have been identified by the administrator of the United States Environmental Protection Agency (EPA) in 40 Code of Federal Regulations Part 261.

(b) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage Processing, or Disposal Facilities) do not apply to an owner or operator of a totally enclosed treatment facility, as defined in §335.1 of this title (relating to Definitions).

(c) Except as provided in §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities) do not apply to the owner or operator of a publicly owned treatment works (POTW) which processes, stores, or disposes of hazardous waste.

(d) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities) do not apply to:

(1) the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §335.1 of this title (relating to Definitions), provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 Code of Federal Regulations §268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 40 Code of Federal Regulations §264.17(b);

(2) persons engaged in processing or containment activities during immediate response to a discharge of a hazardous waste; an imminent

and substantial threat of discharge of hazardous waste; or a discharge of a material which, when discharged, becomes a hazardous waste, except that such person must comply with all applicable requirements of 40 Code of Federal Regulations Part 264, Subparts C and D, and 40 Code of Federal Regulations Part 265, Subparts C and D. Any person who continues or initiates hazardous waste processing or containment activities after the immediate response is over is subject to all applicable requirements of Subchapter E of the chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) (incorporating by reference 40 Code of Federal Regulations Part 265), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) (incorporating by reference 40 Code of Federal Regulations Part 264 and Chapter 305 of of this title (relating to Consolidated Permits); and

(3) persons adding absorbent material to waste in a container, as defined in §335.1 of this title (relating to Definitions) and persons adding waste to absorbent material in a container, provided that these actions occur at the time that waste is first placed in the container, and that in the case of permitted facilities, 40 Code of Federal Regulations §§264.17(b), 264.171, and 264.172, are complied with, and for all other facilities, 40 Code of Federal Regulations §§265.17(b), 265.171, and 265.172 are complied with;

(4) a farmer disposing of waste pesticides from his own use in compliance with §335.77 of this title (relating to Farmers) of this title.

(e) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) does not apply to:

(1) a person who stores, processes, or disposes of hazardous waste on-site and meets the requirements of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); or

(2) the owner or operator of a solid waste facility under the jurisdiction of the Texas Department of Health who stores, processes, or disposes of hazardous waste received from a conditionally exempt small quantity generator.

(f) The following requirements apply to residues of hazardous waste in containers.

(1) Subchapters B-F and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Land Disposal Restrictions) do not apply to any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in paragraph (2) of this subsection. This exemption does not apply to any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty.

(2) For purposes of determining whether a container is empty under this subsection, the following provisions apply.

(A) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e), is empty if:

(i) all wastes have been removed that can be, using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) no more than 2.5 centimeters (one inch) of residue remains on the bottom of the container or inner liner; or

(iii) no more than 3.0% by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or no more than 0.3% by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(B) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmosphere.

(C) A container or an inner liner removed from a container that has held an acute hazardous waste listed in 40 Code of Federal

Regulations §§261.31, 261.32, or 261.33(e), is empty if:

(i) the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

(g) Subchapters B-F and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities; and Land Disposal Restrictions) do not apply to hazardous waste which is managed as a recyclable material described in §335.24(b) and (c) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), except to the extent that requirements of these subchapters are referred to in Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 324 of this title (relating to Used Oil).

(h) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in Subchapter O of this chapter (relating to Land Disposal Restrictions). ~~(i) Except as provided in §335.47 of this title~~ (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) does not ~~apply to persons disposing of hazardous waste by means of underground injection. However, Subchapter F does apply to the aboveground storage or processing of hazardous waste before it is injected underground.~~

Source: The provisions of this §335.41 adopted to be effective May 28, 1986, 11 TexReg 2344; amended to be effective September 1, 1986, 11 TexReg 3695; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective March 6, 1996, 21 TexReg 2400.

Cross References: This Section cited in 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.77, (relating to Farmers); 30 TAC §335.151, (relating to Purpose, Scope, and Applicability); 30 TAC §335.323, (relating to Generation Fee Assessment); 30 TAC §335.324, (relating to Facility Fee Assessment); 30 TAC §335.325, (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment); 30 TAC §335.508, (relating to Classification of Specific Industrial Solid Wastes).

§ 335.43. Permit Required

(a) Except as provided in subsection (b) of this section and §335.2 of this title (relating to Permit Required), no person shall store, process, or dispose of hazardous waste without first having obtained a permit from the Texas Water Commission.

(b) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency or commission rules relative to termination of interim status. If a solid waste facility which has been receiving waste from off-site sources has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §6901 et seq., that

render the facility subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than:

(1) six months after the date of publication of regulations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or

(2) 30 days after the date they first become subject to the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); whichever first occurs; or

(3) for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations §270.10(e)(1)(iii).

(c) The following words and terms, when used in subsection (b) of this section, shall have the following meanings, unless the text clearly indicates otherwise.

(1) On-site storage, processing, or disposal—On-site storage, processing, or disposal occurs when industrial solid waste is:

(A) collected, handled, stored, processed, or disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial waste; and

(B) the industrial solid waste is not collected, handled, stored, processed, or disposed of with solid waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.

(2) Commenced on-site storage, processing, or disposal of hazardous waste—A person has commenced on-site storage, processing, or disposal of hazardous waste if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(A) a continuous physical, on-site construction program has begun; or

(B) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) Subsection (b) of this section shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated.

(e) Upon receipt of federal Hazardous and Solid Waste Act (HSWA) authorization for the Texas Water Commission's (commission) Hazardous Waste Program, the commission shall be authorized to enforce the HSWA provisions that the Environmental Protection Agency (EPA) imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

Source: The provisions of this §335.43 adopted to be effective September 1, 1986, 11 TexReg 3695; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective August 14, 1990, 15 TexReg 4397; amended to be effective November 7, 1991, 16 TexReg 6065.

Cross References: This Section cited in 30 TAC §120.3, (relating to Applicability); 30 TAC §281.2, (relating to Applicability); 30 TAC §281.3, (relating to Initial Review); 30 TAC §281.19, (relating to Technical Review); 30 TAC §305.51, (relating to Revision of Applications for Hazardous Waste Permits); 30 TAC §335.44, (relating to Application for Existing On-Site Facilities); 30 TAC §335.151, (relating to Purpose, Scope, and Applicability); 30 TAC §335.201, (relating to Purpose, Scope, and Applicability); 30 TAC §335.202, (relating to Definitions); 30 TAC §335.322, (relating to Definitions); 30 TAC §335.362, (relating to Applicability).

§ 335.44. Application for Existing On-Site Facilities

(a) In order to satisfy the application deadline specified in §335.43(b) of this title (relating to Permit Required), an application must be submitted

prior to that date which contains information defining the following:

(1) owner(s) and operator(s) of the facility;

(2) description of the site;

(3) description of the facility and all facility components;

(4) identification of wastes generated, stored, processed, or disposed, together with quantities and sources; and

(5) methods and types of operations used in the storage, processing, or disposal of wastes.

(b) In addition to the information required in subsection (a) of this section, a complete application, required prior to action on an application by the commission, must include the following:

(1) engineering plans and specifications and other documentation necessary to demonstrate that all components of the facility design, construction, and operation conform to standards established by the commission; and

(2) information describing actions necessary to bring existing facilities into compliance with commission standards and a schedule for completion of such actions.

(c) An application form can be obtained from the executive director for each geographical location for which the storage, processing, or disposal of hazardous waste is proposed.

(d) The application shall be signed by the applicant or by a duly authorized agent, employee, officer, or representative of the applicant and shall be verified before a notary public.

Source: The provisions of this §335.44 adopted to be effective May 28, 1986, 11 TexReg 2344; amended to be effective September 1, 1986, 11 TexReg 3695.

Cross References: This Section cited in 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.45, (relating to Effect on Existing Facilities).

§ 335.45. Effect on Existing Facilities

(a) Effect on permitted off-site facilities. Subchapters B-E of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; and Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), provide minimum requirements applicable to all persons generating, transporting, storing, processing, and disposing of hazardous waste. All persons holding permits or any other authorizations from the commission or its predecessor agencies, which relate to hazardous waste, shall meet the requirements of Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) until final administrative disposition of their permit application pursuant to standards prescribed by Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) is made. However, where the permit or authorization specifies additional or more stringent requirements, the provisions of the permit or authorization shall be complied with.

(b) Effect on off-site facilities without a permit to re-use, recycle, or reclaim hazardous waste, or to burn hazardous waste in boilers or industrial furnaces. Any person who has commenced the off-site storage, processing, or disposal of hazardous wastes, or activities that are listed, identified, or described by the administrator of the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261, on or before the effective date of statutory or regulatory amendments under the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §§6901 et seq., concerning the re-use, recycling, or reclamation of hazardous waste, or relating to the burning of hazardous waste in boilers or industrial furnaces, that render such wastes or activities subject to the requirements to have a hazardous waste permit, shall file an application with the commission on or before the effective date of such amendments, which includes the applicable information required by §335.44 of this title (relating to Application for Existing On-site Facilities). Any person who has commenced off-site storage, processing, or disposal of hazardous waste on or before the effective date of such amendments, who has filed a hazardous waste permit application with the commission on or before the effective date of such amendments in accordance with the rules and regulations of the commission, and who complies with requirements in this chapter applicable to such activities, may continue the off-site storage, processing, or disposal of the newly listed or identified wastes or waste activities until such time as the Texas Water Commission approves or denies the application. In cases where the aforementioned federal statutory or regulatory amendments become effective prior to the effective date of state statutory or regulatory amendments under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon Pam-

phlet 1992), submittal to the executive director of a copy of the properly filed United States Environmental Protection Agency permit application within 30 days of the effective date of the applicable state statutory or regulatory requirements shall constitute compliance with this subsection with regard to application filing requirements. Facilities that have received a permit for the re-use, recycling, or reclamation of hazardous waste in accordance with Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) are not required to comply with this subsection and may operate pursuant to their existing permit. Such permits, however, are subject to amendment under §305.62 of this title (relating to Amendment) to reflect new regulatory requirements.

Source: The provisions of this §335.45 adopted to be effective September 1, 1986, 11 TexReg 3695; amended to be effective July 29, 1992, 17 TexReg 5017.

Cross References: This Section cited in 30 TAC §120.3, (relating to Applicability); 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.201, (relating to Purpose, Scope, and Applicability); 30 TAC §335.202, (relating to Definitions); 30 TAC §335.362, (relating to Applicability).

~~§ 335.46. Sharing of Information~~

~~Any information obtained or used by the commission in the administration of a hazardous waste program authorized under the Resource Conservation and Recovery Act of 1976, §3006, and 40 Code of Federal Regulations Part 271 shall be available to the Environmental Protection Agency upon request without restriction. If the information has been submitted to the commission under a claim of confidentiality, the commission shall submit that claim to the Environmental Protection Agency when providing information under this section. Any information obtained from the commission and subject to a claim of confidentiality will be treated by the Environmental Protection Agency in accordance with 40 Code of Federal Regulations Part 2. If the Environmental Protection Agency obtains information that is not claimed to be confidential, the Environmental Protection Agency may make that information available to the public without further notice.~~

~~**Source:** The provisions of this §335.46 adopted to be effective May 28, 1986, 11 TexReg 2344.~~

§ 335.47. Special Requirements for Persons Eligible for a Federal Permit by Rule

(a) The following persons are eligible for a permit by rule under 40 Code of Federal Regulations §270.60:

(1) the owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal;

(2) the owner or operator of a publicly owned treatment works (POTW) which accepts hazardous waste for treatment; and

(3) the owner or operator of an injection well used to dispose of hazardous waste.

(b) To be eligible for a permit by rule, such person shall comply with the requirements of 40 Code of Federal Regulations §270.60 and the following rules:

(1) 40 Code of Federal Regulations §264.11 (EPA identification number);

(2) 40 Code of Federal Regulations §264.72 (manifest discrepancies);

(3) 40 Code of Federal Regulations §264.73(a) and (b)(1) (operating record);

(4) 40 Code of Federal Regulations §264.76 (unmanifested waste report);

(5) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners of Storage, Processing, or Disposal Facilities) (shipping and reporting procedures); and

(6) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators) (annual and monthly reports).

(c) In addition to the requirements stated in subsection (b) of this section, the owner or operator of an injection well used to dispose of hazardous waste shall:

(1) comply with the applicable personnel training requirements of 40 Code of Federal Regulations §264.16;

(2) when abandonment is completed, submit to the executive director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in §331.46 of this title (relating to Plugging and Abandonment Standards); and

(3) for underground injection control permits issued after November 8, 1984, comply with §335.167 of this title (relating to Corrective Ac-

tion for Solid Waste Management Units). ~~Where the underground injection well is the only unit at a facility which requires a permit, comply with 40 Code of Federal Regulations §270.14(d) (concerning information requirements for solid waste management units).~~ Persons who dispose of hazardous waste by means of underground injection must obtain a permit under the Texas Water Code, Chapter 27.

(d) In addition to the requirements stated in subsection (b) of this section, the owner or operator of a publicly owned treatment works (POTW) which accepts hazardous waste for treatment shall:

(1) meet all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance; and

(2) for National Pollutant Discharge Elimination System (NPDES) permits issued after November 8, 1984, comply with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

Source: The provisions of §335.47 adopted to be effective May 28, 1986, 11 TexReg 2344; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §331.121, (relating to Class I Wells); 30 TAC §335.41, (relating to Purpose, Scope, and Applicability).

SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Cross References: This Subchapter cited in 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.212, (relating to Standards Applicable to Generators and Transporters of Materials Used in a Manner That Constitutes Disposal); 30 TAC §335.222, (relating to Management Prior to Burning).

§ 335.61. Purpose, Scope, and Applicability

(a) Except as provided in subsection (b) of this section, this subchapter establishes standards for generators of hazardous waste. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) The provisions of this subchapter with which a generator who stores, processes, or disposes of hazardous waste on-site must comply are §335.62 of this title (relating to Hazardous Waste Determination), §335.63 of this title (relating to EPA Identification Numbers), §335.70 of this title (relating to Recordkeeping), §335.73 of this title (relating to Additional Reporting), and, if applicable, §335.77 of this title (relating to Farmers), and §335.69 of this title (relating to Accumulation Time).

(c) Any person who imports hazardous waste into the state from a foreign country shall comply with standards applicable to generators.

(d) An owner or operator who initiates a shipment of hazardous waste from a processing, storage, or disposal facility must comply with the generator standards contained in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste) and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste), and this subchapter. The provisions of §335.69 of this title (relating to Accumulation Time) are applicable to on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §335.69 of this title only apply to owners or operators who are shipping hazardous waste which they generate at that facility.

(e) A farmer who generates waste pesticides which are hazardous waste and who complies with §335.77 of this title (relating to Farmers) is not required to comply with this chapter with respect to those pesticides.

~~(f) A generator who treats, stores, or disposes of~~ hazardous waste on-site must comply with ~~the~~ applicable standards and permit requirements set forth in Subchapters E, F, H, and O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste) and with Chapter 305 of this ~~title (relating to Consolidated Permits).~~

Source: The provisions of this §335.61 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective September 1, 1986, 11 TexReg 3695; amended to be effective April 8, 1987, 12 TexReg 999; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 23, 1993, 18 TexReg 8218.

~~§ 335.62. Hazardous Waste Determination~~ and Waste Classification

A person who generates a solid waste must determine if that waste is ~~hazardous~~ pursuant to §335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of Subchapter R of ~~this chapter (relating to Waste Classification).~~

~~Authority: The provisions of this §335.62 issued under the Texas~~ Water Code, §5.103 and §26.011; and the Texas Solid Waste Disposal Act. §361.017.

Source: The provisions of this §335.62 adopted to be effective November 27, 1992, 17 TexReg 8010.

Cross References: This Section cited in 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.70, (relating to Recordkeeping); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally ~~Exempt Small Quantity Generators).~~

§ 335.63. EPA Identification Numbers

(a) A generator must not store, process, dispose of, transport, or offer for transportation, hazardous waste without having received an Environmental Protection Agency (EPA) identification number.

(b) A generator must not offer hazardous waste to transporters or to storage, processing or disposal facilities that have not received an EPA identification number.

Source: The provisions of this §335.63 adopted to be effective May 28, 1986, 11 TexReg 2345.

Cross References: This Section cited in 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

§ 335.65. Packaging

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 Code of Federal Regulations Parts 173, 178, and 179.

Source: The provisions of this §335.65 adopted to be effective May 28, 1986, 11 TexReg 2345.

Cross References: This Section cited in 30 TAC §335.94, (relating to Transfer Facility Requirements).

§ 335.66. Labeling

Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations Part 172.

Source: The provisions of this §335.66 adopted to be effective May 28, 1986, 11 TexReg 2345.

§ 335.67. Marking

(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations Part 172.

(b) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 Code of Federal Regulations §172.304: HAZARDOUS WASTE-Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Source: The provisions of this §335.67 adopted to be effective May 28, 1986, 11 TexReg 2345.

§ 335.68. Placarding

Before transporting or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 Code of Federal Regulations Part 172, Subpart F.

Source: The provisions of this §335.68 adopted to be effective May 28, 1986, 11 TexReg 2345.

§ 335.69. Accumulation Time

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f)-(h) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

(A) in containers and the generator complies with the provisions adopted by reference in §335.112(a)(8) of this title (relating to Standards); or

(B) in tanks and the generator complies with the requirements adopted by reference in §335.112(a)(9) of this title (relating to Standards), except 40 Code of Federal Regulations §265.197(c) and §265.200; or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title (relating to drip pads) and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from

the drip pad and the sump or collection system and the date and time of removal; or

(D) the waste is placed in containment buildings and the generator complies with Subpart DD of 40 CFR, Part 265, has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days.

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) the generator complies with the requirements for owners or operators contained in 40 Code of Federal Regulations Part 265, Subparts C and D, as incorporated by reference in §335.112 of this title (relating to Standards), with 40 Code of Federal Regulations §265.16, with 40 Code of Federal Regulations §268.7(a)(4), and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter applicable to such owners and operators, unless he has been granted an extension to the 90-day period. Such extension may be granted by the commission if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) applicable to generators of Class I waste.

(d) A generator, other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 Code of Federal Regulations §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) of this section provided he:

(1) complies with 40 Code of Federal Regulations §§265.171, 265.172, and 265.173(a); and

(2) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 Code of Federal Regulations §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;

(2) the generator complies with the requirements of Subpart I of 40 Code of Federal Regulations Part 265, except 40 Code of Federal Regulations §265.176;

(3) the generator complies with the requirements of 40 Code of Federal Regulations §265.201 in Subpart J of 40 Code of Federal Regulations Part 265;

(4) the generator complies with the requirements of subsection (a)(2) and (3) of this section and the requirements of 40 Code of Federal Regulations Part 265, Subpart C, the requirements of 40 Code of Federal Regulations §268.7(a)(4); and

(5) the generator complies with the following requirements:

(A) At all times, there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (D) of this paragraph. This employee is the emergency coordinator.

(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:

(i) the name and telephone number of the emergency coordinator;

(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) the telephone number of the fire department, unless the facility has a direct alarm.

(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows.

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) identification number of the generator;

(II) date, time, and type of incident (e.g., spill or fire);

(III) quantity and type of hazardous waste involved in the incident;

(IV) extent of injuries, if any; and

(V) estimated quantity and disposition of recovered materials, if any.

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for offsite processing, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kg or accumulates hazardous waste for more than 180 days (or more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of storage facility and is subject to the requirements of this chapter and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the Texas Water Commission if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

~~(i) A generator who generates or collects hazardous waste for the purpose of treatability studies is not subject to this section.~~

Source: The provisions of this §335.69 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective January 5, 1988, 12 TexReg 4846; amended to be effective February 1, 1989, 14 TexReg 316; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.325, (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment).

§ 335.70. Recordkeeping

(a) A generator of hazardous waste must keep records of any test results, waste analyses, or other determinations made in accordance with §335.62 of this title (relating to Hazardous Waste Determination) for at least three years from the date that the waste was last sent to an on-site or off-site storage, processing or disposal facility.

(b) The generator shall keep a copy of each annual report and exception report required by this title for a period of at least three years from the due date of the report.

(c) The periods of record retention required by subsections (a) and (b) of this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the executive director.

Source: The provisions of this §335.70 adopted to be effective May 28, 1986, 11 TexReg 2345.

Cross References: This Section cited in 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

§ 335.71. Biennial Reporting

In addition to annual reporting which is required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), in every even-numbered year facilities subject to the United States Environmental Protection Agency biennial reporting requirements shall submit to the commission information as required by 40 Code of Federal Regulations §262.41. Upon request, this supplemental information shall be prepared in a form provided or approved by the executive director and submitted within the specified timeframe. Activities covered in the report shall be for the previous odd-numbered report year. Facilities subject to the United States Environmental Protection Agency biennial reporting requirements include all large quantity generators of hazardous waste for any month during the previous odd-numbered report year.

Source: The provisions of this §335.71 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 2515; amended to be effective February 4, 1994, 19 TexReg 509.

Cross References: This Section cited in 30 TAC §305.146, (relating to Reporting); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

§ 335.73. Additional Reporting

The executive director may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 Code of Federal Regulations Part 261, Subparts C and D.

Source: The provisions of this §335.73 adopted to be effective May 28, 1986, 11 TexReg 2345.

Cross References: This Section cited in 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.74, (relating to Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month).

§ 335.74. Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month

A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is exempt from the recordkeeping and reporting requirements of this subchapter, except for §335.70(a) and (c) of this title (relating to Recordkeeping); and §335.73 of this title (relating to Additional Reporting); and §335.13(a) and (g) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste and Primary Exporters of Hazardous Waste). Such generators are subject to the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators).

Source: The provision of this §335.74 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 23, 1993, 18 TexReg 8218.

§ 335.75. Notification Requirements for Interstate Shipments

In the case of interstate shipments of hazardous waste for which a manifest has not been returned within 45 days of acceptance of the waste by the initial transporter, the generator shall notify the appropriate regulatory agency of the state in which

~~the designated facility is located and the appropri~~ate regulatory agency of the state in which the shipment may have been delivered. If a state required to be notified under this section has not received interim or final authorization pursuant to the Resource Conservation and Recovery Act of the 1976, §3006, the generator shall notify the administrator that the manifest has not been returned.

Source: The provisions of this §335.75 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106.

§ 335.76. Additional Requirements Applicable to International Shipments

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986, provide otherwise, a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). Exports of hazardous waste are prohibited unless:

(1) notification in accordance with the regulations contained in 40 CFR §262.53, which are in effect as of November 8, 1986, has been provided;

(2) the receiving country has consented to accept the hazardous waste;

(3) a copy of the EPA acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(4) the hazardous shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent; and

(5) the primary exporter complies with the manifest requirements of §335.10(a)-(d) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:

(A) in lieu of the name, site address, and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(B) in lieu of the name, site address, and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(C) in special handling instructions and additional information, the primary exporter must identify the point of departure from the United States;

(D) the following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form, as set out in §335.10(b)(23) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste): "and conforms to the terms of the attached EPA acknowledgment of consent";

(E) the primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in §335.12(c)(1) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) as the subsection applies to hazardous waste between the manifest and the

shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste;

(F) in lieu of the requirements of §335.10(a) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(i) renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with the regulations contained in 40 CFR §262.53(c), which are in effect as of November 8, 1986, and obtain an EPA acknowledgment of consent prior to delivery; or

(ii) instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(iii) instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;

(G) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and

(H) the primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the United States customs official at the point the hazardous waste leaves the United States in accordance with §335.11(g) (4) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste).

(c) A primary exporter must submit an exception report to the executive director if:

(1) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;

(2) within 90 days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the foreign consignee that the hazardous waste was received; or

(3) the waste was returned to the United States.

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for the manifest except that:

(1) in place of the generator's name, address, and EPA identification number, the name and address of the foreign generator and the importer's name, address, and EPA identification number must be used;

(2) in place of the generator's signature on the certification statement, the United States importer or his agent must sign and date the certification and obtain the signature of the initial transporter; and

(3) a person who imports hazardous waste must obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), which are in effect as of November 8, 1986.

(g) Except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR

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§262.57, which are in effect as of November 8, 1986.

Source: The provisions of this §335.76 adopted to be effective May 28, 1986, 11 TexReg 2345; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §335.13, (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters).

§ 335.77. Farmers

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with this chapter for those wastes provided that he triple rinses each emptied pesticide container in accordance with § 335.41(f)(2)(C) of this title (relating to Purpose, Scope, and Applicability) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

Source: The provisions of this §335.77 adopted to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §335.41, (relating to Purpose, Scope, and Applicability); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability).

§ 335.78. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e)-(g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before an Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits) and the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) Hazardous waste that is not subject to regulation or that is subject only to §§335.62, 335.63, 335.70, and 335.71 of this title (relating to Hazardous Waste Determination; EPA Identification Numbers; Recordkeeping; and Annual Reporting) is not included in the quantity determinations of this section and Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions) and Chapter 305 of this title (relating to Consolidated Permits) and is not subject to any of the requirements of such subchapters or chapter. Hazardous waste that is subject to the requirements of §§335.24(d)-(f), 335.211-335.214, 335.221-335.226, and 335.241 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials; Recyclable Materials Used in a Manner Constituting Disposal; Hazardous Waste Burned for Energy Recovery; and Applicability) is included in the quantity determination of this section and is subject to the requirements of Subchapters C-H of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 305 of this title (relating to Consolidated Permits).

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

~~(2) hazardous waste which is generated or collected for the purpose of treatability studies;~~

(3) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or

(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedure Before Public Hearing; Procedures During Public Hearing, Procedures After Public Hearing Before an Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits) and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination).

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before an Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits) and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of his acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States is:

(A) permitted by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(B) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulations Part 271;

(D) permitted, licensed, or registered by a state to manage municipal or industrial solid waste: or

(E) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title (relating to Hazardous Waste Determination).

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulated at any time more than a total of 1,000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1,000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D-H and O of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions) and Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before an Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits) and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms;

(3) A conditionally exempt small quantity generator may either process or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(B) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulations Part 271;

(D) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(E) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil and the mixture is going to recycling, the mixture is subject to Chapter 324 of this title (relating to Used Oil) and 40 Code of Federal Regulations Part 279.

Source: The provision of this §335.78 adopted to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective February 1, 1989, 14 TexReg 316; amended to be effective March 6, 1996, 21 TexReg 2400.

Cross References: This Section cited in 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335 10. (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardo); 30 TAC §335.13, (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary

Exporters); 30 TAC §335.41, (relating to Purpose, Scope and Applicability); 30 TAC §335.69, (relating to Accumulation Time); 30 TAC §335.221, (relating to Applicability and Standards).

Subchapter D. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

Cross References: This Subchapter cited in 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.76, (relating to Additional Requirements Applicable to International Shipments); 30 TAC §335.212, (relating to Standards Applicable to Generators and Transporters of Materials Used in a Manner That Constitutes Disposal); 30 TAC §335.222, (relating to Management Prior to Burning).

§ 335.91. Scope

(a) This subchapter establishes standards for transporters transporting hazardous waste to off-site storage, processing, or disposal facilities. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) This subchapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of storage, processing, or disposal facilities.

(c) A transporter of hazardous waste must also comply with any standards applicable to generators of hazardous waste if he:

(1) transports hazardous waste into the state from a foreign country; or

(2) mixes hazardous waste of different Department of Transportation shipping descriptions by placing them into a single container.

(d) Transporters who store hazardous waste are owners or operators of storage facilities and, as such, are also subject to the permit requirements and storage standards contained in this chapter.

Source: The provisions of this §335.91 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.92. EPA Identification Number

A transporter must not transport hazardous wastes without having received an Environmental Protection Agency (EPA) identification number.

Source: The provisions of this §335.92 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.93. Hazardous Waste Discharges

(a) In the event of a discharge of hazardous waste during transportation, the transporter shall notify the commission as soon as possible and not later than 24 hours after the occurrence, according to the provisions of the Texas Water Code, §26.039, and the procedures set out in the State Oil and Hazardous Substances Spill Contingency Plan, and also take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge).

(b) If a discharge of hazardous waste occurs during transportation and a commission official acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(c) An air, rail, highway, or water transporter who has discharged hazardous waste must also:

(1) give notice, if required by 49 Code of Federal Regulations §171.15, to the National Response Center (800-424-8802 or 202-426-2675); and

(2) report in writing as required by 49 Code of Federal Regulations §171.16 to the Director, Office of Hazardous Waste Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 Code of Federal Regulations §153.203 for oil and hazardous substances.

(e) A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by the commission so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

Source: The provisions of this §335.93 adopted to be effective May 28, 1986, 11 TexReg 2347.

§ 335.94. Transfer Facility Requirements

(a) Unless the executive director determines that a permit should be required in order to protect human health and the environment, a transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of §335.65 of this title (relating to Packaging) at a transfer facility for a period of 10 days or less is not subject to the requirement for a permit under §335.2 of this title (relating to Permit Required), with respect to the storage of those wastes provid-

ed that the transporter complies with the following sections:

(1) 40 Code of Federal Regulations §265.14 relating to Security);

(2) 40 Code of Federal Regulations §265.15 (relating to General Inspection Requirements);

(3) 40 Code of Federal Regulations §265.16 (relating to Personnel Training);

(4) 40 Code of Federal Regulations Part 265, Subpart C;

(5) 40 Code of Federal Regulations Part 265, Subpart D (except §265.56(j)) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(6) 40 Code of Federal Regulations Part 265, Subpart I.

(b) The executive director may require a permit for that portion of a facility otherwise exempted from that requirement under subsection (a) of this section, with respect to the storage of hazardous waste in containers, if the facility's operation also includes other storage and processing of hazardous waste which is not exempt under subsection (a) of this section.

Source: The provisions of this §335.94 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §335.6, (relating to Notification Requirements).

SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

Cross References: This Subchapter cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.8, (relating to Closure and Remediation); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.41, (relating to Purpose, Scope and Applicability); 30 TAC §335.43, (relating to Permit Required); 30 TAC §335.45, (relating to Effect on Existing Facilities); 30 TAC §335.69, (relating to Accumulation Time); 30 TAC §335.151, (relating to Purpose, Scope, and Applicability); 30 TAC §335.213, (relating to Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate); 30 TAC §335.214, (relating to Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal); 30 TAC §335.222, (relating to Management Prior to Burning); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.251, (relating to Applicability and Requirements); 30 TAC §335.565, (relating to Post-Closure Care Required for Risk Reduction Standard Number 3).

§ 335.111. Purpose, Scope, and Applicability

(a) The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. This subchapter and the standards of 40 Code of Federal Regulations §264.552 and §264.553 apply to owners and operators of hazardous waste storage, processing, or disposal facilities who have fully complied with the requirements for interim status under the Resource Conservation and Recovery Act, §3005(e).

(b) Environmental Protection Agency (EPA) Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027 must not be managed at facilities subject to regulation under this subchapter, unless:

(1) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(2) the waste is stored in tanks or containers;

(3) the waste is stored or processed in waste piles that meet the requirements of 40 Code of Federal Regulations §264.250(c) as well as all other applicable requirements of 40 Code of Federal Regulations Part 265, Subpart L, and §335.120 of this title (relating to Containment for Waste Piles);

(4) the waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 Code of Federal Regulations §265.352; or

(5) the waste is burned in facilities that thermally process the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 Code of Federal Regulations §265.383.

(c) The requirements of this section apply to owners or operators of all facilities which process, store, or dispose of hazardous waste referred to in 40 Code of Federal Regulations Part 268, and the 40 Code of Federal Regulations Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards incorporated by reference in §335.112 of this title (relating to Standards).

Source: The provisions of this §335.111 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 22, 1994, 19 TexReg 969.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.112. Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990, at 55 FedReg 22685 and as further amended as indicated in each paragraph of this section:

(1) Subpart B—General Facility Standards (as amended through November 18, 1992, at 57 FedReg 54452);

(2) Subpart C—Preparedness and Prevention;

(3) Subpart D—Contingency Plan and Emergency Procedures, except 40 CFR §265.56(d);

(4) Subpart E—Manifest System, Recordkeeping and Reporting (as amended through January 29, 1992, at 57 FedReg 3492), except 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77;

(5) Subpart F—Groundwater Monitoring (as amended through December 23, 1991, at 56 FedReg 66369), except 40 CFR §265.90 and §265.94;

(6) Subpart G—Closure and Post-Closure (as amended through August 18, 1992, at 57 FedReg 37194); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H—Financial Requirements (as amended through September 16, 1992, at 57 FedReg 42832); except 40 CFR §265.142(a)(2); provided that the corporate guarantee for closure or for post-closure care, described in 40 CFR §265.143(e)(10) or §265.145(e)(11), respectively, may be provided only by a direct or higher-tier parent corporation of the owner or operator;

(8) Subpart I—Use and Management of Containers;

(9) Subpart J—Tank Systems (as amended through August 31, 1993, at 58 FedReg 46040);

(10) Subpart K—Surface Impoundments (as amended through August 18, 1992, at 57 FedReg 37194-37282);

(11) Subpart L—Waste Piles (as amended through January 29, 1992, at 57 FedReg 3493), except 40 CFR §265.253;

(12) Subpart M—Land Treatment, except 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N—Landfills (as amended through July 10, 1992, at 57 FedReg 30658), except 40 CFR §§265.301(f)-265.301(i), 265.314, and 265.315;

(14) Subpart O—Incinerators (as amended through February 21, 1991, at 56 FedReg 7208);

(15) Subpart P—Thermal Treatment (as amended through July 17, 1991, at 56 FedReg 32692);

(16) Subpart Q—Chemical, Physical, and Biological Treatment;

~~(17) Subpart R—Underground Injection;~~

(18) Subpart W—Drip Pads (as amended through December 24, 1992, at 57 FedReg 61492);

(19) Subpart AA—Air Emission Standards for Process Vents (as amended through April 26, 1991, at 56 FedReg 19290);

(20) Subpart BB—Air Emission Standards for Equipment Leaks (as amended through April 26, 1991, at 56 FedReg 19290);

(21) Subpart DD—Containment Buildings (as amended through August 18, 1992, at 57 FedReg 37194); and

(22) The following appendices contained in 40 CFR Part 265:

(A) Appendix I—Recordkeeping Instructions (as amended through March 24, 1994, at 59 FedReg 13891);

(B) Appendix III—EPA Interim Primary Drinking Water Standards;

(C) Appendix IV—Tests for Significance; and

(D) Appendix V—Examples of Potentially Incompatible Waste.

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes:

(1) The term "regional administrator" is changed to the "executive director" of the Texas Natural Resource Conservation Commission or to the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B;

(2) The term "treatment" is changed to "processing";

(3) References the Resource Conservation and Recovery Act, to §3008(h) are changed to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action);

(4) References to 40 CFR §§260.10, 264.90, 264.101, 270.41, or 270.42, are changed to §335.1 of this title (relating to Definitions),

§335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), §305.62 of this title (relating to Amendment), or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), respectively;

(5) References to 40 CFR, Part 264, Subpart F, are changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(6) References to 40 CFR, Part 265, Subpart F, are changed to include §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR, Part 265, Subpart F, except §265.90 and §265.94; and

(7) References to the EPA are changed to the Texas Natural Resource Conservation Commission.

(c) A copy of 40 CFR, Part 265 is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

Source: The provisions of this §335.112 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective September 1, 1986, 11 TexReg 3696; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective October 29, 1990, 15 TexReg 6017; amended to be effective March 18, 1991, 16 TexReg 1369; amended to be effective July 16, 1991, 16 TexReg 3730; amended to be effective December 13, 1991, 16 TexReg 6936; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.1, (relating to Definitions); 30 TAC §335.5, (relating to Deed Recordation of Waste Disposal); 30 TAC §335.69, (relating to Accumulation Time); 30 TAC §335.111, (relating to Purpose, Scope, and Applicability); 30 TAC §335.115, (relating to Additional Reports); 30 TAC §335.222, (relating to Management Prior to Burning); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.113. Reporting of Emergency Situations by Emergency Coordinator

If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, he must report his findings as follows.

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate local officials decide whether local areas should be evacuated.

(2) He must immediately notify the commission according to procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The report must include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and place of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health or the environment outside the facility.

Source: The provisions of this §335.113 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.69, (relating to Accumulation Time); 30 TAC §335.94, (relating to Transfer Facility Requirements); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners).

§ 335.114. Reporting Requirements

(a) The owner or operator must prepare and submit to the executive director by January 25 of each year a single copy of an annual report which covers facility activities during the previous year and contains the following information:

(1) the EPA identification number, name, and address of the facility;

(2) the calendar year covered by the report;

(3) the TWC hazardous waste code and a description and the quantity of each hazardous waste the facility received during the year;

(4) the method of processing, storage, or disposal for each hazardous waste;

(5) monitoring data under §335.117(a)(2)(B) and (C), and (b)(2) of this title (relating to Recordkeeping and Reporting) where required;

(6) the most recent closure cost estimate under the regulations contained in 40 Code of Federal Regulations, §265.142, which are in effect as of May 2, 1986, and §335.127 of this title (relating to Cost Estimate for Closure), and, for disposal facilities, the most recent post-closure cost estimate under the regulations contained in 40 Code of Federal Regulations, §265.144 which are in effect as of May 2, 1986;

(7) for generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(8) for generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(9) the certification signed by the owner or operator of the facility or his authorized representative.

~~(b) An owner of operator receiving waste from~~ off-site sources shall also file a monthly summary in accordance with §335.15 of this title (related to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities). The annual report required by this section for such owners and operators need not contain the information required by subsection (a)(3) and (4) of this section if such information has already been submitted pursuant to §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

Source: The provisions of this §335.114 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.9, (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); 30 TAC §335.115, (relating to Additional Reports); 30 TAC §335.117, (relating to Recordkeeping and Reporting); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners).

§ 335.115. Additional Reports

In addition to submitting the annual report and waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and §335.114 of this title (relating to Reporting Requirements), the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations §265.56(j);

(2) groundwater contamination and monitoring data as specified in 40 Code of Federal Regulations §265.93 and §335.117 of this title (relating to Recordkeeping and Reporting);

(3) facility closure as specified in 40 Code of Federal Regulations §265.115; and

(4) as otherwise required by §335.112(a)(2) of this title (relating to Standards), which incorporates the requirements of 40 Code of Federal Regulations Part 265, Subparts AA and BB.

Source: The provisions of this §335.115 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners).

§ 335.116. Applicability of Groundwater Monitoring Requirements

(a) On November 19, 1981, the owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste must implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as provided in subsection (c) of this section.

(b) Except as provided in subsections (c) and (d) of this section, the owner or operator must install, operate, and maintain a groundwater monitoring system which meets the requirements of 40 Code of Federal Regulations §265.91, and must comply with 40 Code of Federal Regulations §265.92 and §265.93, and §335.117 of this title (relating to Recordkeeping and Reporting). This groundwater monitoring program must be carried out during the active life of the facility, and for disposal facilities during the post-closure care period as well.

(c) All or part of the groundwater monitoring requirements of this subchapter may be waived if the owner or operator can demonstrate that there

is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells (domestic, industrial, or agricultural) or to surface water. This demonstration must be in writing and must be kept at the facility. This demonstration must be certified by a qualified geologist or geotechnical engineer and must establish the following:

(1) the potential for migration of hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(A) a water balance of precipitation, evapotranspiration, runoff, and infiltration; and

(B) unsaturated zone characteristics (i.e., geologic materials, physical properties, and depth to ground water); and

(2) the potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(A) saturated zone characteristics (i.e., geologic materials, physical properties, and rate of groundwater flow); and

(B) the proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes (or knows) that groundwater monitoring of indicator parameters in accordance with 40 Code of Federal Regulations §265.91 and §265.92 would show statistically significant increases (or decreases in the case of pH) when evaluated under 40 Code of Federal Regulations §265.93(b), he may install, operate, and maintain an alternate groundwater monitoring system (other than the one described in 40 Code of Federal Regulations §265.91 and §265.92). If the owner or operator does decide to use an alternate groundwater monitoring system he must:

(1) prior to November 19, 1981, submit to the executive director a specific plan certified by a qualified geologist or geotechnical engineer which satisfies the requirements of 40 Code of Federal Regulations §265.93(d)(3), for an alternate groundwater monitoring system;

(2) prior to November 19, 1981, initiate the determinations specified in 40 Code of Federal Regulations §265.93(d)(4);

(3) prepare and submit a written report in accordance with 40 Code of Federal Regulations §265.93(d)(5);

(4) continue to make the determinations specified in 40 Code of Federal Regulations §265.93(d)(4) on a quarterly basis until final closure of the facility; and

(5) comply with the recordkeeping and reporting requirements in §335.117 of this title (relating to Recordkeeping and Reporting).

(e) The groundwater monitoring requirements of this subchapter may be waived with respect to any surface impoundment that:

(1) is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristic under 40 Code of Federal Regulations §261.22 or are listed as hazardous wastes in 40 Code of Federal Regulations Part 261, Subpart D, only for this reason; and

(2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstrations must establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

(f) For owners and operators who have not established background concentrations or values in accordance with 40 Code of Federal Regulations §265.92(c) by November 19, 1982, the executive director may require the implementation of a groundwater assessment plan under 40 Code of Federal Regulations §265.93, whenever he determines that existing data indicates that there is a substantial likelihood that hazardous waste or hazardous constituents from the facility have entered the uppermost aquifer.

Source: The provisions of this §335.116 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.152, (relating to Standards).

§ 335.117. Recordkeeping and Reporting

(a) Unless the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses required in 40 Code of Federal Regulations §265.92(c) and (d), the associated groundwater surface elevations required in 40 Code of Federal Regulations §265.92(e), and the evaluations required in §335.93(b) of this title (relating to Hazardous

Waste Discharges) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) report the following groundwater monitoring information to the executive director:

(A) during the first year, when initial background concentrations are being established for the facility, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III of 40 Code of Federal Regulations Part 265;

(B) quarterly, during the initial year of groundwater monitoring, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265. 92(b)(2) and (3) for each groundwater monitoring well. Annually thereafter, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 Code of Federal Regulations §265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with 40 Code of Federal Regulations §265.93(c)(1). During the active life of the facility, this information must be submitted as part of the annual report required under §335.114 of this title (relating to Reporting Requirements). In addition, concentration of the groundwater quality parameters listed in 40 Code of Federal Regulations §265.92(b)(2) shall be reported annually.

(C) as a part of the annual report required under §335.114 of this title (relating to Reporting Requirements), results of the evaluation of groundwater surface elevations under 40 Code of Federal Regulations §265.93(f), and a description of the response to that evaluation where applicable.

(b) If the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses and evaluations specified in the plan which satisfies the requirements of 40 Code of Federal Regulations §265.93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) annually, until final closure of the facility, submit to the executive director a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. This report must be submitted as part of the annual report required under §335.114 of this title (relating to Reporting Requirements).

(c) The owner or operator shall submit, upon request of the executive director, the following static information for each groundwater monitoring well:

(1) date of well construction;

(2) total depth of well (based on mean sea level);

(3) type of well (ex. trench lysimeter, piezometer, well cluster, multiple screen, pressure vacuum, lysimeter);

(4) latitude/longitude (based on United States geological survey topographic map);

(5) geologic age of aquifer sampled;

(6) aquifer name/geologic formation and age.

(d) The owner or operator shall submit, upon request of the executive director, the following information on each sampling event for each groundwater monitoring well sampled:

(1) date of observation;

(2) depth to water level (based upon mean sea level);

(3) sample collection method (i.e. pumped well, bailer, probe, air-lift pump, jetted, peristaltic pump, centrifugal pump, or pitcher pump);

(4) depth to the top of the sample interval which is measured in the number of feet below the land surface datum (LSD);

(5) depth to the bottom of the sample interval which is measured in feet below the LSD.

Source: The provisions of this §335.117 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.115, (relating to Additional Reports); 30 TAC §335.116, (relating to Applicability of Groundwater Monitoring Requirements); 30 TAC §335.152, (relating to Standards).

§ 335.118. Closure Plan; Submission and Approval of Plan

(a) Except as provided in this section, the owner or operator must submit his closure plan to the executive director in accordance with the procedures outlined in 40 Code of Federal Regulations (CFR) §265.112. The owner or operator must submit his closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, Texas Civil Statutes, Article 4477-7, to cease receiving wastes or close.

(b) The executive director will provide the owner or operator and the public, through newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The executive director will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of receipt. If the executive director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved closure plan. The executive director's decision must assure that the approved closure plan is consistent with 40 CFR §§265.111-265.115, and the applicable closure requirements contained in this chapter for specific waste management methods, and contained in 40 CFR §264.1102. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

Source: The provisions of this §335.118 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.123, (relating to Closure and Post-Closure (Land Treatment Facilities)).

§ 335.119. Post-closure Plan; Submission and Approved of Plan

(a) The owner or operator of a facility with hazardous waste management units subject to the post-closure care requirements in 40 Code of Federal Regulations Part 265, Subpart G, must submit his post-closure plan to the executive director at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date when he expects to begin closure must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous waste no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit his post-closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit issued to the facility simultaneously with terminations of interim status); or

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, §3008, as amended, or the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, to cease receiving wastes or close.

(b) The executive director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post-closure plan and request modifications of the plan, including modification of the 30-year post-closure period required in 40 Code of Federal Regulations §265.117 within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The executive director will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) The executive director will ap-

prove, modify, or disapprove the plan within 90 days of its receipt. If the executive director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved post-closure plan. The executive director must ensure that the approved post-closure plan is consistent with 40 Code of Federal Regulations §§265.117-265.120. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator. If an owner or operator plans to begin closure before November 19, 1981, he must submit the post-closure plan by May 19, 1981.

Source: The provisions of this §335.119 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.120. Containment for Waste Piles

If leachate or run-off from a pile is a hazardous waste, then either:

(1) the pile must be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage; the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 100-year storm; the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm; and collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control, systems must be emptied or otherwise managed expeditiously to maintain design capacity of the system;

(2) the pile is managed such that:

(A) the pile must be protected from precipitation and run-on by some other means; and

(B) no liquids or wastes containing free liquids may be placed in the pile.

Source: The provisions of this §335.120 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.111, (relating to Purpose, Scope, and Applicability).

§ 335.121. General Operating Requirements (Land Treatment Facilities)

(a) Hazardous waste must not be placed in or on a land treatment facility unless the waste can be made less hazardous or nonhazardous by degradation, transformation, or immobilization processes occurring in or on the soil.

(b) The owner or operator must design, construct, operate, and maintain a run-control system capable of preventing flow on to the active portions of the facility during peak discharge from at least a 100-year storm.

(c) The owner or operator must design, construct, operate, and maintain a run-off management system capable of collecting and controlling a water volume at least equivalent to a 24-hour, 100-year storm.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(e) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

Source: The provisions of this §335.121 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.123, (relating to Closure and Post-Closure (Land Treatment Facilities)).

§ 335.122. Recordkeeping

The owner of a land treatment facility must keep records of the application dates, application rates, quantities, and location of each hazardous waste placed in the facility in the operating record required in 40 Code of Federal Regulations §265.73.

Source: The provisions of this §335.122 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.123. Closure and Post-Closure (Land Treatment Facilities)

(a) In the closure plan under 40 Code of Federal Regulations §265.112 and the post-closure plan under 40 Code of Federal Regulations §265.118, the

owner or operator must address the following objectives and indicate how they will be achieved:

(1) control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

(2) control of the releaser of contaminated run-off from the facility into surface water;

(3) control of the release of airborne particulate contaminants caused by wind erosion; and

(4) compliance with 40 Code of Federal Regulations §265.276, concerning the growth of food-chain crops.

(b) The owner or operator must consider at least the following factors addressing the closure and post-closure care objectives of subsection (a) of this section:

(1) type and amount of hazardous waste and hazardous constituents applied to the land treatment facility;

(2) the mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to groundwater, surface water, and drinking water sources);

(4) climate, including amount, frequency, and pH or precipitation;

(5) geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) unsaturated zone monitoring information obtained under 40 Code of Federal Regulations §265.278; and

(7) type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(c) The owner or operator must consider at least the following method in addressing the closure and post-closure care objective of subsection (a) of this section:

(1) removal of contaminated soils;

(2) placement of a final cover, considering:

(A) functions of the cover (e.g., infiltration control, erosion and run-off control, and wind erosion control); and

(B) characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover;

(3) collection and treatment run-off;

(4) diversion structures to prevent surface water run-on from entering the treated area; and

(5) monitoring of soil, soil-pore water, and groundwater.

(d) In addition to the requirements of 40 Code of Federal Regulations Part 265, Subpart G, relating to closure and post-closure, §335.118 of this title (relating to Closure Plan; Submission and Approval of Plan) and §335. 119 of this title (relating to Post-Closure Plan; Submission and Approval Plan), during the closure period, the owner or operator of a land treatment facility must:

(1) continue unsaturated zone monitoring in a manner frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

(2) maintain the run-on control system required under §335.121(b) of this title (relating to General Operating Requirements (Land Treatment Facilities));

(3) maintain the run-off management system required under §335.121(c) of this title (relating to General Operating Requirements (Land Treatment Facilities)); and

(4) control wind dispersal of particulate matter which may be subjected to wind dispersal.

(e) For the purpose of complying with 40 Code of Federal Regulations §265.115 concerning certification of closure, when closure is completed, the owner or operator may submit to the executive director certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(f) In addition to the requirements of 40 Code of Regulations §265.117 concerning post-closure care and use of property, during the post-closure care period, the owner or operator of a land treatment unit must:

(1) continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;

(2) restrict access to unit as appropriate for its post-closure use;

(3) assure that growth of food chain crops complies with 40 Code of Federal Regulations §265.276 concerning food chain crops; and

(4) control wind dispersal of hazardous waste.

Source: The provisions of this §335.123 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.10, (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste).

§ 335.124. General Operating Requirements (Landfills)

(a) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

(b) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm.

(c) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(d) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind must cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

(e) As required by 40 Code of Federal Regulations (CFR) §265.13, the waste analysis plan must include analyses needed to comply with 40 CFR §265.312 (concerning Special Requirements for Ignitable or Reactive Waste) and 40 CFR §265.313 (concerning Special Requirements for Incompatible Wastes). ~~The waste analysis plan must also include analyses needed to comply with §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste).~~ As required by 40 CFR §265.73 (concerning Operating Record), the owner or operator must place the results of these analyses in the operating record of the facility.

Source: The provisions of this §335.124 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.125. Special Requirements for Bulk and Containerized Waste

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if prior to disposal, the liquid waste or waste containing free liquids is processed or stabilized, chemically or physically (e.g., by mixing with a sorbent solid), so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A container holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

(1) the container is designed to hold liquids or free liquids for use other than storage, such as capacitor or battery;

(2) the container is very small, such as an ampule; or

(3) the container is disposed of in accordance with 40 Code of Federal Regulations §265.316.

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 Code of Federal Regulations §260.11 and in §335.31 of this title (relating to Incorporation of References).

(e) The date for compliance with subsection(a) of this section is November 19, 1981. The date of compliance with subsection (c) of this section is March 22, 1982.

(f) Effective November 8, 1985, the placement of any liquid which is not hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the executive director or the executive director determines that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) placement is such owner of operator's landfill will not present a risk of contamination of any underground source of drinking water (as

that term is defined in §331.2 of this title (relating to Definitions)).

Source: The provisions of this §335.125 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.124, (relating to General Operating Requirements (Landfills)).

§ 335.126. Special Requirements for Containers

(a) Containers must be crushed flat, shredded, or similarly reduced in volume to the maximum extent practicable before burial in a landfill.

(b) Owners or operators must be in compliance with this section by November 19, 1981.

Source: The provisions of this §335.126 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.127. Cost Estimate for Closure

In addition to the requirements of 40 Code of Federal Regulations §265.142 (excluding 40 Code of Federal Regulations §265.142(a)(2), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (see the definition of parent corporation in 40 Code of Federal Regulations §265.141(d). Notwithstanding other closure costs, such estimate must also include the costs associated with third part removal, shipment off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

(1) maximum inventory of wastes in storage and/or processing units, including, but not limited to, storage surface impoundments, waste piles, tanks, and containers;

(2) wastes generated as a result of closure activities (e.g., decontamination, removal of liquids from surface impoundments, or waste piles);

(3) contaminated stormwater; or

(4) leachate.

Source: The provision of this §335.127 adopted to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.114, (relating to Reporting Requirements); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners).

SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

Cross References: This Subchapter cited in 30 TAC §120.21, (relating to General Air Emissions Requirements for Hazardous or Solid Waste Management Facilities); 30 TAC §305.50, (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit); 30 TAC §305.141, (relating to Applicability); 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.7, (relating to Bond or Other Financial Assurance Required); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.41, (relating to Purpose, Scope and Applicability); 30 TAC §335.45, (relating to Effect on Existing Facilities); 30 TAC §335.213, (relating to Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate); 30 TAC §335.214, (relating to Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal); 30 TAC §335.222, (relating to Management Prior to Burning); 30 TAC §335.223, (relating to Additional Permit Standards for Burners); 30 TAC §335.251, (relating to Applicability and Requirements); 30 TAC §335.366, (relating to General Air Emissions Requirements for Hazardous or Solid Waste Management Facilities).

§ 335.151. Purpose, Scope, and Applicability

(a) The purpose of this subchapter is to establish minimum standards to define the acceptable management of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste, pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992), and in the evaluation of an investigation report to implement groundwater protection requirements relating to compliance monitoring and corrective action; and in the evaluation of corrective action measures to be instituted pursuant to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). For facilities that store, process, or dispose of industrial solid waste, in addition to hazardous waste, nothing herein shall be construed to restrict or abridge the commission's authority to implement the provisions of the Texas Water Code, Chapter 26, and §335.4 of this title (relating to General Prohibitions), with respect to those activities.

(b) The standards in this subchapter apply to owners and operators of all facilities which process, store, or dispose of hazardous waste, except as specifically provided for in §335.41 of this title (relating to Purpose, Scope, and Applicability).

(c) A facility owner or operator who has fully complied with the requirements for interim status, as defined in the Resource Conservation and Recovery Act, §3005(e), and §335.2 and §335.43 of this title (relating to Permit Required), must comply with the requirements of Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) in lieu of the requirements of this subchapter, until final administrative disposition of his permit application is made, except as provided under Title 40, Code of Federal Regulations, Part 264, Subpart S.

Source: The provisions of §335.151 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective February 22, 1994, 19 TexReg 969.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.152. Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990, at 55 FedReg 22685 and as further amended and adopted as indicated in each paragraph of this section:

(1) Subpart B—General Facility Standards (as amended through November 18, 1992, at 57 FedReg 54452); in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C—Preparedness and Prevention;

(3) Subpart D—Contingency Plan and Emergency Procedures, except 40 CFR §264.56(d);

(4) Subpart E—Manifest System, Recordkeeping, and Reporting (as amended through January 29, 1992, at 57 FedReg 3462), except 40 CFR §§264.71, 264.72, 264.75, 264.76 and 264.77; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G—Closure and Post-Closure (as amended through August 18, 1992, at 57 FedReg 37194); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H—Financial Requirements (as amended through June 10, 1994, in 59 FedReg 29958); except 40 CFR §264.142(a)(2); and subject to the limitations set forth in this section:

(A) Facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a), 264.144(a) and 264.147(b);

(B) Facilities which qualify for the corporate guarantee for liability are additionally subject to 40 CFR §264.147(g)(2) and §264.151(h)(2); and

(C) The corporate guarantee for closure or for post-closure care, described in 40 CFR §264.143(f)(10) or §264.145(f)(11), respectively, may be provided only by a direct or higher-tier parent corporation of the owner or operator;

(7) Subpart I—Use and Management of Containers;

(8) Subpart J—Tank Systems (as amended through August 31, 1993, at 58 FedReg 46040);

(9) Subpart K—Surface Impoundments (as amended and adopted through January 29, 1992, at 57 FedReg 3462), except 40 CFR §264.221 and §264.228:

(A) References to 40 CFR 264.221 are changed to §335.168 of this title (relating to Design and Operating Requirements);

(B) References to 40 CFR 264.228 are changed to §335.169 of this title (relating to Closure and Post-Closure Care);

(10) Subpart L—Waste Piles (as amended and adopted through January 29, 1992, at 57 FedReg 3462), except 40 CFR §264.251;

(11) Subpart M—Land Treatment, except 40 CFR §264.273 and §264.280;

(12) Subpart N—Landfills (as amended through November 18, 1992, at 57 FedReg 54452), except 40 CFR §§264.301, 264.310, 264.314 and 264.315;

(13) Subpart O—Incinerators (as amended through February 21, 1991, at 54 FedReg 7207);

(14) Subpart S—Corrective Action for Solid Waste Management Units (as amended through February 16, 1993, at 58 FedReg 8683);

(15) Subpart W—Drip Pads (as amended through December 24, 1992, at 57 FedReg 61492);

(16) Subpart X—Miscellaneous Units;

(17) Subpart AA—Air Emission Standards for Process Vents (as amended through April 26, 1991, at 56 FedReg 19290);

(18) Subpart BB—Air Emission Standards for Equipment Leaks (as amended through April 26, 1991, at 56 FedReg 19290);

(19) Subpart DD—Containment Buildings (as amended through August 18, 1992, at 57 FedReg 37194); and

(20) The following appendices contained in 40 CFR Part 264:

(A) Appendix I—Recordkeeping Instructions (as amended through March 24, 1994, at 59 FedReg 13891);

(B) Appendix IV—Cochron's Approximation to the Behrens-Fisher Students' T-Test;

(C) Appendix V—Examples of Potentially Incompatible Waste;

(D) Appendix VI—Political Jurisdictions in Which Compliance With §264.18(a) Must Be Demonstrated; and

(E) Appendix IX—Ground-Water Monitoring List.

(b) The provisions of 40 Code of Federal Regulations §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201-335.206 of this title (relating to Location Standards for Hazardous Waste Storage, Processing, or Disposal). A copy of 40 Code of Federal Regulations §264.18(b) is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(c) The regulations of the Environmental Protection Agency that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Natural Resource Conservation Commission or to the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) References to the Resource Conservation and Recovery Act, §3008(h), are changed to the Texas Solid Waste Disposal Act, Texas Health and Safety Code (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action).

(4) References to 40 Code of Federal Regulations §§260.10, 264.90, 264.101, 270.41, or 270.42, are changed to §335.1 of this title (relating to Definitions), §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), §305.62 of this title (relating to Amendment), or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), respectively.

(5) References to 40 Code of Federal Regulations, Part 264, Subpart F, are changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

(6) References to 40 Code of Federal Regulations. Part 265, Subpart F, are changed to include §335.116 of this title (relating Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 Code of Federal Regulations, Part 265, Subpart F, except §265.90 and §265.94.

(7) References to the EPA are changed to the Texas Natural Resource Conservation Commission.

(d) A copy of 40 Code of Federal Regulations, Part 264, is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin.

Source: The provisions of this §335.152 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective September 1, 1986, 11 TexReg 3696; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515; amended to be effective August 4, 1989, 14 TexReg 3532, amended to be effective October 29, 1990, 15 TexReg 6017; amended to be effective December 13, 1991, 16 TexReg 6936; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effecuve February 22, 1994, 19 TexReg 969; amended to be

effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §305.50, (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit); 30 TAC §305.64, (relating to Transfer of Permits); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §331.3, (relating to Injection Prohibited); 30 TAC §335.1, (relating to Definitions); 30 TAC §335.167, (relating to Corrective Action for Solid Waste Management Units); 30 TAC §335.222, (relating to Management Prior to Burning); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.153. Reporting of Emergency Situations by Emergency Coordinator

If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment outside the facility, he must report his findings as follows.

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate local officials decide whether local areas should be evacuated.

(2) He must immediately notify the commission according to procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The report must include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and place of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health, or the environment, outside the facility.

Source: The provisions of this §335.153 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 335.154. Reporting Requirements for Owners and Operators

(a) The owner or operator must prepare and submit to the executive director by January 25 of each year an annual report which covers facility activities during the previous calendar year and which contains the following information:

(1) the EPA identification number, name, and address of the facility;

(2) the calendar year covered by the report;

(3) the TWC hazardous waste code and description and the quantity of each hazardous waste the facility received during the year;

(4) the method of storage, processing, or disposal for each hazardous waste;

(5) the most recent closure cost estimate under the regulations contained in 40 Code of Federal Regulations, §264.142 which are in effect as of May 2, 1986, and §335.178 of this title (relating to Cost Estimate For Closure) and, for disposal facilities, the most recent post-closure cost estimate under the regulations contained in 40 Code of Federal Regulations, §264.144 which are in effect as of May 2, 1986;

(6) for generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(7) for generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

(8) The certification signed by the owner or operator of the facility or his authorized representative.

~~(b) An owner or operator receiving hazardous~~ waste from off-site shall file a monthly summary in accordance with §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposable Facilities). The annual report required by this section by such owners or operators need not included the information required by subsection (a)(3) and (4) of this section if such information has already been submitted pursuant to §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal ~~Facilities).~~

Source: The provisions of this §335.154 adopted to be effective May 28,1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 27, 1988, 13 TexReg 3515.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.146, (relating to Reporting); 30 TAC §335.47, (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule); 30 TAC §335.155, (relating to Additional Reports); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 335.155. Additional Reports

In addition to submitting the annual report and waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators), the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations §264.56(j);

(2) facility closure as specified in 40 Code of Federal Regulations §264.115;

(3) as otherwise required by 40 Code of Federal Regulations Part 264, Subparts F, K-N, X, AA, and BB.

Source: The provisions of this §335.155 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 335.156. Applicability of Groundwater Monitoring and Response

(a) Except as provided in subsection (b) of this section, the rules pertaining to groundwater monitoring and response apply to owners and operators of facilities that process, store, or dispose of hazardous waste.

(1) The owner or operator must satisfy those requirements of paragraph (2) of this subsection for all wastes (or constituents thereof) contained in any such waste management unit at the facility, regardless of the time at which waste was placed in the units.

(2) All solid waste management units must comply with the requirements in §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). A surface impoundment, waste pile, land treatment unit, or landfill that receives hazardous waste after July 26, 1982, (hereinafter referred to as a regulated unit) must comply with the requirements of §§335.157-335.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); in lieu of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units for purposes of detecting, characterizing, and responding to release to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) apply to regulated units.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this section and §§335.157-335.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) if:

(1) he is exempted under 40 Code of Federal Regulations §264.1;

(2) he operates a unit which the commission finds;

(A) is an engineered structure;

(B) does not receive or contain liquid waste or waste containing free liquids;

(C) is designed and operated to exclude liquid, precipitation, and other run-on and runoff;

(D) has both inner and outer layer of containment enclosing the waste;

(E) has a leak detection system built into each containment layer for which continuing operation and maintenance will be provided during the active life of the unit and the closure and post-closure care periods; and

(F) to a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

(3) the commission finds, pursuant to 40 Code of Federal Regulations §264.280(d), that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above backgrounds levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of 40 Code of Federal Regulations §264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can

only relieve an owner or operator or responsibility to meet the requirements of this subchapter relating to groundwater monitoring and response during the post-closure care period; or

(4) The commission finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified under 40 Code of Federal Regulations §264.117. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions on assumptions that maximize the rate of liquid migration;

(5) he designs and operates a pile in compliance with 40 Code of Federal Regulations §264.250(c).

(c) This §§335.157-335.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, these sections:

(1) do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) apply during the post closure care period under 40 Code of Federal Regulations §264.117 if the owner or operator is conducting a detection monitoring program under §335.164 of this title (relating to Detection Monitoring Program); or

(3) apply during the compliance period under §335.162 of this title (relating to Compliance Period) if the owner or operator is conducting a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program) or a corrective action program under §335.166 of this title (relating to Corrective Action Program).

Source: The provisions of this §335.156 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 335.157. Required Programs

(a) Owners and operators subject to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response); this section, and §§335.158-335.166 of this title (relating to Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) must conduct a monitoring and response program as follows.

(1) Whenever hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) from a regulated unit are detected at the compliance point under §335.161 of this title (relating to Point of Compliance), the owner or operator must institute a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program). "Detection" is defined as statistically significant evidence of contamination as described in §335.164(6) of this title (relating to Detection Monitoring Program).

(2) Whenever the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard) is exceeded, the owner or operator must institute a corrective action program under §335.166 of this title (relating to Corrective Action Program). "Exceeded" is defined as statistically significant evidence of increased contamination as described in §335.165(4) of this title (relating to Compliance Monitoring Program).

(3) Whenever hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) from a regulated unit exceed concentration limits under §335.160 of this title (relating to Concentration Limits) in groundwater between the compliance point under §335.161 of this title (relating to Point of Compliance) and the downgradient facility property boundary, the owner or operator must institute a corrective action program under §335.166 of this title (relating to Corrective Action Program).

(4) In all other cases, the owner or operator must institute a detection monitoring program under §335.164 of this title (relating to Detection Monitoring Program).

(b) The commission will specify in the facility permit or in a compliance plan the specific elements of the monitoring and response program. The commission may include one or more of the programs identified in subsection (a) of this section in the facility permit or in a compliance plan as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. The commission will establish the programs specified in subsection (a)(1)-(3) of this section in a compliance plan. If the owner or operator is not otherwise subject to compliance monitoring, the detection monitoring program will be established in the facility permit. In deciding whether to require the owner or operator to be prepared to institute a particular program, the commission will consider the potential adverse effects on human health and the environment that might occur before final administrative action to incorporate such a program could be taken.

Source: The provisions of this §335.157 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective October 29, 1990, 15 TexReg 6017.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)).

§ 335.158. Groundwater Protection Standard

The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) which have been detected in the groundwater from a regulated unit do not exceed the concentration limits under §335.160 of this title (relating to Concentration Limits) in the uppermost aquifer underlying the waste management area beyond the point of compliance during the compliance period under §335.162 of this title (relating to Compliance Period). The commission will establish this groundwater protection standard in the compliance plan when hazardous constituents have been detected in the groundwater from a regulated unit.

Source: The provisions of this §335.158 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective October 29, 1990, 15 TexReg 6017.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.159, (relating to Hazardous Constituents); 30 TAC §335.161, (relating to Point of Compliance); 30 TAC §335.162, (relating to Compliance Period); 30 TAC §335.165, (relating to Compliance Monitoring Program); 30 TAC §335.166, (relating to Corrective Action Program); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)).

§ 335.159. Hazardous Constituents

(a) The commission will specify in the compliance plan the hazardous constituents to which the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standard) applies. Hazardous constituents are constituents identified in Appendix VIII of 40 Code of Federal Regulations, Part 261, that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the commission has excluded them under subsection (b) of this section.

(b) The commission will exclude an Appendix VIII constituent from the list of hazardous constituents specified in the compliance plan if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the commission will consider the following:

(1) potentially adverse effects on groundwater quality, considering:

(A) the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity of groundwater and the direction of groundwater follows;

(D) the proximity and withdrawal rates of groundwater users;

(E) the current and future uses of groundwater in the area;

(F) the existing quality of groundwater, including other sources of contamination and

their cumulative impact on the groundwater quality;

(G) the potential for health risks caused by human exposure to waste constituents;

(H) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(I) the persistence and permanence of the potentially adverse effects; and

(2) potentially adverse effects on hydraulically-connected surface water quality, considering:

(A) the volume and physical and chemical characteristics of the waste in the regulated unit;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity and quality of groundwater, and the direction of groundwater flow;

(D) the patterns of rainfall in the region;

(E) the proximity of the regulated unit to surface waters;

(F) the current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(H) the potential for health risks caused by human exposure to waste constituents;

(I) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) the persistence and permanence of the potentially adverse effects.

(c) In making any determination under subsection (b) of this section about the use of groundwater in the area around the facility, the commission will consider any identification of underground sources of drinking water and exempted aquifers made under §331.13 of this title (relating to Exempted Aquifer).

Source: The provisions of this §335.159 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.158, (relating to Groundwater Protection Standard); 30 TAC §335.160, (relating to Concentration Limits); 30 TAC §335.165, (relating to Compliance Monitoring Program); 30 TAC §335.166, (relating to Corrective Action Program); 30 TAC §335.168, (relating to Design and Operating Requirements (Surface Impoundments)); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.173, (relating to Design and Operating Requirements (Landfills)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)).

§ 335.160. Concentration Limits

(a) The commission will specify in the compliance plan concentration limits in the groundwater for hazardous constituents established under §335.159 of this title (relating to Hazardous Constituents). The concentration of a hazardous constituent:

(1) must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the plan;

(2) for any of the constituents listed in Table 1 of subsection (b)(1) of this section, must not exceed the respective value given in that table if the background level of the constituent is below the value given in Table 1; or

(3) must not exceed an alternate limit established by the commission under subsection (b) of this section.

(b) The commission will establish an alternate concentration limit for a hazardous constituent if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the commission will consider the following:

(1) potentially adverse effects on groundwater quality, considering the maximum concentration of constituents for groundwater protection described in the following Table 1 and:

Table 1
Maximum Concentration of Constituents for Groundwater Protection

Constituent	*Maximum Concentration**
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10–hexachloro–1,7–expoxy–1,4, 4a,5,6,7,8,9a–octahydro–1,4–endo, endo–5,8–dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6–hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1–Trichloro–2, 2–bis) (p–methoyxphenylethane)	0.1

Constituent	Maximum Concentration*
Toxaphene (C(-H(-Cl, Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2-4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01

* 1 Milligrams per liter.

(A) the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity of groundwater and the direction of groundwater follow;

(D) the proximity and withdrawal rates of groundwater users;

(E) the current and future uses of groundwater in the area;

(F) the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) the potential for health risks caused by human exposure to waste constituents;

(H) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(I) the persistence and permanence of the potentially adverse effects; and

(2) potentially adverse effects of hydraulically-connected surface-water quality, considering:

(A) the volume and physical and chemical characteristics of the waste in the regulated unit;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity and quality of groundwater, and the direction of groundwater flow;

(D) the patterns of rainfall in the region;

(E) the proximity of the regulated unit to surface waters;

(F) the current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) the existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality;

(H) the potential for health risks caused by human exposure to waste constituents;

(I) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) the persistence and permanence of the potentially adverse effects.

(c) In making any determination under subsection (b) of this section about the use of groundwater in the area around the facility, the commission will consider any identification of underground sources of drinking water and exempted aquifers made under §331.13 of this title (relating to Exempted Aquifer).

Source: The provisions of this §335.160 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.158, (relating to Groundwater Protection Standard); 30 TAC §335.164, (relating to Detection Monitoring Program); 30 TAC §335.165, (relating to Compliance Monitoring Program); 30 TAC §335.166, (relating to Corrective Action Program); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)); 30 TAC §335.563, (relating to Media Cleanup Requirements for Risk Reduction Standard Number 3).

§ 335.161. Point of Compliance

(a) The commission will specify in the facility permit the point of compliance at which the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standard) applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area may be described in the following manner:

(A) by an imaginary line circumscribing the several regulated units;

(B) by an imaginary line circumscribing geographically proximate regulated units;

(C) by an imaginary line circumscribing individually regulated units; or

(D) a combination of subparagraphs (B) and (C) of this paragraph.

Source: The provisions of this §335.161 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.164, (relating to Detection Monitoring Program); 30 TAC §335.165, (relating to Compliance Monitoring Program); 30 TAC §335.166, (relating to Corrective Action Program); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)).

§ 335.162. Compliance Period

(a) The commission will specify in the compliance plan the compliance period during which the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standards) applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting and the closure period).

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of §335.165 of this title (relating to Compliance Monitoring Program).

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in subsection (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standard) has not been exceeded for a period of three consecutive years.

Source: The provisions of this §335.162 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.158, (relating to Groundwater Protection Standard); 30 TAC §335.165, (relating to Compliance Monitoring Program); 30 TAC §335.166, (relating to Corrective Action Program); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)).

§ 335.163. General Groundwater Monitoring Requirements

If a facility contains more than one waste management area, separate groundwater monitoring systems must be installed. The owner or operator must comply with the following requirements for any groundwater monitoring program developed to satisfy §§335.164-335.166 of this title (relating to Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program).

(1) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(A) represent the quality of background water that has not been affected by leakage from a regulated unit:

(i) a determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(ii) sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells;

(B) represent the quality of groundwater passing the point of compliance; and

(C) allow for detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(2) If a waste management area contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit, provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(3) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring-well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of

groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater.

(4) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum, the program must include procedures and techniques for:

(A) sample collection;

(B) sample preservation and shipment;

(C) analytical procedures; and

(D) chain of custody control.

(5) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(6) The groundwater monitoring program must include a determination of the groundwater surface elevation each time groundwater is sampled.

(7) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point(s). The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed and shall follow generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant released to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit. This sampling procedure shall be:

(A) a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(B) an alternate sampling procedure proposed by the owner or operator of the facility and approved by the commission.

(8) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent which, upon approval by the commission, will be specified in the facility's permit on a unit by unit basis. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (PQLs) are used in any of the following statistical procedures to comply with paragraph (9)(E) of this section, the PQL must be proposed by the owner or operator and approved by the executive director. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in paragraph (9) of this section:

(A) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(B) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(C) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(D) a control chart approach that gives control limits for each constituent;

(E) another statistical test method submitted by the owner or operator and approved by the executive director.

(9) Any statistical method chosen under paragraph (8) of this section for specification in the unit permit shall comply with the following performance standards, as appropriate.

(A) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous

constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(C) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the commission if it finds it to be protective of human health and the environment.

(D) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the commission if it finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any PQL approved by the executive director under paragraph (8) of this section that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(10) Groundwater monitoring data collected in accordance with paragraph (7) of this section including actual levels of constituents must be maintained in the facility operating record. The commission will specify in the permit when the data must be submitted for review.

Source: The provisions of this §335.163 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective October 29, 1990, 15 TexReg 6017.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.164, (relating to Detection Monitoring Program); 30 TAC §335.165, (relating to Compliance Monitoring Program); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)).

§ 335.164. Detection Monitoring Program

An owner or operator required to establish a detection monitoring program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The commission will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(A) the types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(B) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(C) the detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(D) the concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §335.161 of this

title (relating to Point of Compliance). The groundwater monitoring system must comply with §335.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in its permit pursuant to paragraph (1) of this section in accordance with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements). The owner or operator must maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements).

(A) The owner or operator must comply with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements) in developing the data base used to determine background values.

(B) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements).

(C) In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with §335.163(1)(A), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(4) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (1) of this section in accordance with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during detection monitoring.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit pursuant to paragraph (1) of this section at a frequency specified under paragraph (4) of this section.

(A) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements). These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(B) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The commission will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(7) If the owner or operator determines pursuant to paragraph (6) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(B) immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of Appendix IX of 40 Code of Federal Regulations Part 264 are present, and if so, in what concentration;

(C) For any Appendix IX compounds found in the analysis pursuant to subparagraph (B) of this paragraph, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to subparagraph (B) of this paragraph, the hazardous constituents found during this initial Appendix IX anal-

ysis will form the basis for compliance monitoring.

(D) within 90 days, submit to the executive director an application for a permit amendment or modification to establish a compliance monitoring program meeting the requirements of §335.165 of this title (relating to Compliance Monitoring Program). The application must include the following information:

(i) an identification of the concentration of any Appendix IX constituent detected in the groundwater at each monitoring well at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of §335.165 of this title (relating to Compliance Monitoring Program);

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of §335.165 of this title (relating to Compliance Monitoring Program); and

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under §335.160(a)(1) or (2) of this title (relating to Concentration Limits), or a notice of intent to seek an alternate concentration limit under §335.160(b) of this title (relating to Concentration Limits);

(E) within 180 days, submit to the executive director:

(i) all data necessary to justify an alternate concentration limit sought under §335.160(b) of this title (relating to Concentration Limits);

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirements of §335.166 of this title (relating to Corrective Action Program), unless:

(I) all hazardous constituents identified under subparagraph (B) of this paragraph are listed in Table 1 of §335.160 of this title (relating to Concentration Limits) and their concentrations do not exceed the respective values given in that table; or

(II) the owner or operator has sought an alternate concentration limit under §335.160(b) of this title (relating to Concentration Limits) for every hazardous constituent identified under subparagraph (B) of this paragraph;

(F) if the owner or operator determines, pursuant to paragraph (6) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit amendment or modification application under subparagraph (D) of this paragraph; however, the owner or operator is not relieved of the requirement to submit a permit amendment or modification application within the time specified in subparagraph (D) of this paragraph unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) notify the executive director in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) within 90 days, submit a report to the executive director which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) within 90 days, submit to the executive director an application for a permit amendment or modification to make any appropriate changes to the detection monitoring program at the facility; and

(iv) continue to monitor in accordance with the detection monitoring program established under this section.

(8) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a per-

mit amendment or modification to make any appropriate changes to the program.

Source: The provisions of this §335.164 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective October 29, 1990, 15 TexReg 6017; amended to be effective March 1, 1996, 21 TexReg 1425.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.112, (relating to Standards); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.163, (relating to General Groundwater Monitoring Requirements); 30 TAC §335.165, (relating to Compliance Monitoring Program); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)).

§ 335.165. Compliance Monitoring Program

An owner or operator required to establish a compliance monitoring program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard). The commission will specify the groundwater protection standard in the compliance plan, including:

(A) a list of the hazardous constituents identified under §335.159 of this title (relating to Hazardous Constituents);

(B) concentration limits under §335.160 of this title (relating to Concentration Limits) for each of those hazardous constituents;

(C) the compliance point under §335.161 of this title (relating to Point of Compliance); and

(D) the compliance period under §335.162 of this title (relating to Compliance Period).

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §335.161 of this title (relating to Point of Compliance). The groundwater monitoring system must comply with §335.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The commission will specify the sampling procedures and statistical methods appropriate for the constituents at the facility, consistent with §335.163(7) and (8) of this title (relating to General Groundwater Monitoring Requirements).

(A) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements).

(B) The owner or operator must record groundwater analytical data as measured by and in a form necessary for the determination of statistical significance under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements) for the compliance period of the facility.

(4) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to paragraph (1) of this section, at a frequency specified under paragraph (6) under this section.

(A) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title (relating to General Groundwater Monitoring Requirements). The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with §335.163 of this title (relating to General Groundwater Monitoring Requirements).

(B) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The commission will specify that time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with §335.163(7) of this title (relating to General Groundwater Monitoring Requirements). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during the compliance period of the facility.

(7) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of 40 Code of Federal Regulations Part 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in §335.164(6) of this title (relating to Detection Monitoring Program). If the owner or operator finds Appendix IX constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the executive director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he must report the concentrations of these additional constituents to the executive director within seven days after completion of the initial analysis and add them to the monitoring list.

(8) If the owner or operator determines, pursuant to paragraph (4) of this section, that any concentration limits under §335.160 of this title (relating to Concentration Limits) are being exceeded at any monitoring well at the point of compliance, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded;

(B) submit to the executive director an investigation report to establish a corrective action program meeting the requirements of §335.166 of this title (relating to Corrective Action Program) within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the executive director under §335.164(7)(E) of this title (relating to Detection Monitoring Program). The report must at a minimum include the following information:

(i) a detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under paragraph (1) of this section; and

(ii) a plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(9) If the owner or operator determines, pursuant to paragraph (4) of this section, that the groundwater concentration limits are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by error in sampling, analysis, or evaluation or natural variation in groundwater. In making a demonstration under this subsection, the owner or operator must:

(A) notify the executive director in writing within seven days that he intends to make a demonstration under this section;

(B) within 90 days submit a report to the executive director which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(C) within 90 days submit to the executive director an application for a compliance plan amendment or compliance modification to make any appropriate change to the compliance monitoring program at the facility; and

(D) continue to monitor in accord with the compliance monitoring program established under this section.

(10) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

(11) The owner or operator shall prepare an annual summary to include the groundwater quality data and groundwater flow rate and direction required under paragraphs (3) and (5) of this section. Such annual summary shall be submitted to the executive director by January 21 of each year on forms provided or approved by the executive director. An owner or operator must keep a copy of the summary for a period of at least three years from the due date of the summary. The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

Source: The provisions of this §335.165 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective August 4, 1989, 14 TexReg 3532; amended to be effective October 29, 1990, 15 TexReg 6017.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.162, (relating to Compliance Period); 30 TAC §335.163, (relating to General Groundwater Monitoring Requirements); 30 TAC §335.164, (relating to Detection Monitoring Program); 30 TAC §335.166, (relating to Corrective Action Program); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)).

§ 335.166. Corrective Action Program

An owner or operator required to establish a corrective action program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard). The commission will specify the groundwater protection standard in the compliance plan, including:

(A) a list of the hazardous constituents identified under §335.159 of this title (relating to Hazardous Constituents);

(B) concentration limits under §335.160 of this title (relating to Concentration Limits) for each of those hazardous constituents;

(C) the compliance point under §335.161 of this title (relating to Point of Compliance); and

(D) the compliance period under §335.162 of this title (relating to Compliance Period).

(2) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The plan will specify the specific measures that will be taken.

(3) The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The commission will specify that time period in the plan. If a compliance plan includes a corrective action program in addition to a compliance monitoring program, the plan will specify when the corrective action will begin and such a requirement will operate in lieu of §335.165(9)(B) of this title (relating to Compliance Monitoring Program).

(4) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program) and must be as effective as that program in determining compliance with the groundwater protection standard under paragraph (5) of this section, where appropriate.

(5) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) that exceed concentration limits under §335.160 of this title (relating to Concentration Limits) in groundwater between the compliance point under §335.161 of this title (relating to Point of Compliance) and the downgradient facility property boundary and beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. The plan will specify the measures to be taken.

(A) Corrective action measures under this section must be initiated and completed within a reasonable period of time considering the extent of contamination.

(B) Corrective action measures under this section may be terminated once the concentration of hazardous constituents under §335.159 of this title (relating to Hazardous Constituents) is reduced to levels below their respective concentration under §335.160 of this title (relating to Concentration Limits).

(6) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceed-

ed. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the groundwater monitoring program under paragraph (4) of this section, that the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standard) has not been exceeded for a period of three consecutive years.

(7) The owner or operator must report in writing to the executive director on the effectiveness of the corrective action program. The owner or operator must submit these reports semiannually.

(8) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

Source: The provisions of this §335.166 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.157, (relating to Required Programs); 30 TAC §335.163, (relating to General Groundwater Monitoring Requirements); 30 TAC §335.164, (relating to Detection Monitoring Program); 30 TAC §335.165, (relating to Compliance Monitoring Program); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)); 30 TAC §335.174, (relating to Closure and Post-Closure Care (Landfills)).

§ 335.167. Corrective Action for Solid Waste Management Units

(a) The owner or operator of a facility seeking a permit for the processing, storage, or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) Corrective action will be specified in the compliance plan under §305.401 of this title (relating to Groundwater Compliance Plan) and in accordance with this section, 40 Code of Federal Regulations, Part 264, Subpart S, and §335.152 of this title (relating to Standards). The plan will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or plan) and assurances of financial responsibility for completing such corrective action.

(c) The owner or operator must implement corrective actions beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided to the executive director.

Source: The provisions of this §335.167 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 22, 1994, 19 TexReg 969.

Cross References: This Section cited in 30 TAC §305.2, (relating to Definitions); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §335.1, (relating to Definitions); 30 TAC §335.47, (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule); 30 TAC §335.151, (relating to Purpose, Scope, and Applicability); 30 TAC §335.152, (relating to Standards); 30 TAC §335.156, (relating to Applicability of Groundwater Monitoring and Response); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 335.168. Design and Operating Requirements (Surface Impoundments)

(a) Any surface impoundment that is not covered by subsection (c) of this section or 40 Code of Federal Regulations §265.221 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with §335.169(a)(1) of this

title (relating to Closure and Post-Closure Care (Surface Impoundments)). For impoundments that will be closed in accordance with §335.169(a)(2) of this title (relating to Closure and Post-Closure Care (Surface Impoundments)), the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(1) constructed or materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirement of subsections (a) and (i) of this section if the commission finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §335.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must meet the requirements of 40 CFR §264.221(c), as amended through January 29, 1992, at 57 FedReg 3487.

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that he meets the requirements of 40 CFR 264.221(d), as amended through January 29, 1992, at 57 FedReg 3462.

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics in 40 Code of Federal Regulations §261.24, and is in compliance with either of the following requirements:

(1) the monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including, but not limited to, groundwater monitoring and corrective action;

(B) is located more than ¼ mile from an underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)); and

(C) in compliance with groundwater monitoring requirements of this subchapter; or

(2) the owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement surface impoundment unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(*o*)(1)(A)(i) and (*o*)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind, and wave action; rainfall; run-off, malfunctions of level controllers, alarms, and other equipment; and human error.

(h) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(i) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(j) A surface impoundment (except for an existing portion of a surface impoundment) that will be closed in accordance with §335.169(a)(2) of this title (relating to Closure and Post-Closure Care (Surface Impoundments)) must have an additional liner to that required in subsection (a) of this section which:

(1) prevents any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the post-closure care period; and

(2) minimizes the rate of migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment.

Source: The provisions of this §335.168 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective March 18, 1991, 16 TexReg 1369; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.169, (relating to Closure and Post-Closure Care (Surface Impoundments)); 30 TAC §335.170, (relating to Design and Operating Requirements (Waste Piles)).

§ 335.169. Closure and Post-Closure Care (Surface Impoundments)

(a) At closure, the owner or operator must:

(1) remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 Code of Federal Regulations §261.3(d) applies; or

(2) eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues; stabilize remaining wastes to a bearing capacity sufficient to support final cover; and cover the surface impoundment with a final cover designed and constructed to:

(A) provide long-term minimization of the migration of liquids through the closed impoundment;

(B) function with minimum maintenance;

(C) promote drainage and minimize erosion or abrasion of the final cover;

(D) accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all post-closure requirements contained in 40 Code of Federal Regulations §§264.117-264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under 40 Code of Federal Regulations §264.117). The owner or operator must:

(1) maintain the integrity and effectiveness of the final cover including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) maintain and monitor the leak detection system in accordance with 40 CFR §§264.221(c)(2)(iv) and (3) and 264.226(d), and

comply with all other applicable leak detection system requirements of this subchapter;

(3) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of §§335.156-335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); and

(4) prevent run-on and run-off from eroding or otherwise damaging the final cover.

(c) If an owner or operator plans to close a surface impoundment in accordance with subsection (a)(1) of this section, and the impoundment does not comply with the liner requirements of §335.168(a) of this title (relating to Design and Operating Requirements (Surface Impoundments)) and is not exempt from them in accordance with §335.168(b) of this title (relating to Design and Operating Requirements (Surface Impoundments)), then:

(1) the closure plan for the impoundment under 40 Code of Federal Regulations §264.112 must include both a plan for complying with subsection (a)(1) of this section and a contingent plan for complying with subsection (a)(2) of this section, in case not all contaminated subsoils can be practicably removed at closure; and the owner or operator must prepare a contingent post-closure plan under 40 Code of Federal Regulations §264.118 for complying with subsection (b) of this section, in case not all contaminated subsoils can be practicably removed at closure;

(2) the cost estimates calculated under 40 Code of Federal Regulations §264. 142 and §264.144 for closure and post-closure care of an impoundment subject to this subsection must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under subsection (a)(1) of this section.

Source: The provisions of this §335.169 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.168, (relating to Design and Operating Requirements (Surface Impoundments)).

§ 335.170. Design and Operating Requirements (Waste Piles)

(a) A waste pile (except for an existing portion of a waste pile) must have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility. The liner must be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The commission will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 centimeters (one foot). The leachate collection and removal system must be:

(A) constructed of materials that are:

(i) chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(B) designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) The owner or operator will be exempted from the requirements of subsection (a) of this section if the commission finds, based on a demonstration by the owner or operator, the alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner and operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992, must comply with the requirements of 40 CFR §264.251(c), as amended through January 29, 1992, at 57 FedReg 3488.

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that such design and operating practices, together with location characteristics:

(1) will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) of this section; and

(2) will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) Subsection (c) of this section does not apply to monofills that are granted a waiver by the Commission in accordance with §335.168(e) of this title (relating to Design and Operating Requirements (Surface Impoundments)).

(f) The owner or operator of any replacement waste pile unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(*o*)(1)(A)(i) and (*o*)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 100-year storm.

(h) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(i) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind dispersal.

(k) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Source: The provisions of this §335.170 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.171. Design and Operating Requirements (Land Treatment Units)

The commission will specify in the facility permit how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this section.

(1) The owner or operator must design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator must design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration under 40 Code of Federal Regula-

tions §264.272. At a minimum, the commission will specify the following in the facility permit:

(A) the rate and method of waste application to the treatment zone;

(B) measures to control soil pH;

(C) measures to enhance microbial or chemical reactions (e.g., fertilization, tilling); and

(D) measures to control the moisture content of the treatment zone.

(2) The owner or operator must design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

(3) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 100-year storm.

(4) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(5) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(6) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

(7) The owner or operator must inspect the unit weekly and after storms to detect evidence of:

(A) deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(B) improper functioning of wind dispersal control measures.

Source: The provisions of this §335.171 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.172, (relating to Closure and Post-Closure Care (Land Treatment Units)).

§ 335.172. Closure and Post-Closure Care (Land Treatment Units)

(a) During the closure period, the owner or operator must:

(1) continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under §335.171(1) of this title (relating to Design and Operating Requirements (Land Treatment Units)), except to the extent such measures are inconsistent with paragraph (8) of this subsection;

(2) continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under §335.171(3) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(3) maintain the run-on control system required under §335.171(3) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(4) maintain the run-off management system required under §335.171(4) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(6) continue to comply with any prohibitions or conditions concerning growth of food-chain crops under 40 Code of Federal Regulations §264.276;

(7) continue unsaturated zone monitoring in compliance with 40 Code of Federal Regulations §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

(8) establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover must be capable of maintaining growth without extensive maintenance.

(b) For the purpose of complying with 40 Code of Federal Regulations §264.115, when closure is completed, the owner or operator may submit to the executive director certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post-closure care period, the owner or operator must:

(1) continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other post-closure care activities;

(2) maintain a vegetative cover over closed portions of the facility;

(3) maintain the run-on control system required under §335.171(3) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(4) maintain the run-off management system required under §335.171(4) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(6) continue to comply with any prohibition or conditions concerning growth of food-chain crops under 40 Code of Federal Regulations §264.276; and

(7) continue unsaturated zone monitoring in compliance with 40 Code of Federal Regulations §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under subsections (a)(8) and (c) of this section if the commission finds that the level of hazardous constituents in the treatment zone does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (3) of this subsection. The owner or operator may submit such a demonstration to the executive director at any time during the closure or post-closure care periods.

(1) The owner or operator must establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under 40 Code of Federal Regulations §264.271(b).

(A) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(B) The owner or operator must express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under paragraph (3) of this subsection.

(2) In taking samples used in the determination of background and treatment zone values, the owner or operator must take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by solid waste or leakage from the treatment zone, and the soil within the treatment zone, respectively.

(3) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator must use a statistical procedure that:

(A) is appropriate for the distribution of the data used to establish background values; and

(B) provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(e) The owner or operator is not subject to regulation under §§335.156-335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); if the commission finds that the owner or operator satisfied subsection (d) of this section and if unsaturated zone monitoring under 40 Code of Federal Regulations §264.278 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

Source: The provisions of this §335.172 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.173. Design and Operating Requirements (Landfills)

(a) Any landfill that is not covered by subsection (c) of this section or 40 Code of Federal Regulations §265.301(a) must have a liner system for all portions of the landfill (except for existing portions of such landfill). The liner system must have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner must be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a liner that:

(A) prevents any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the post-closure care period; and

(B) minimizes the rate of migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment; and

(3) a leachate collection and removal system immediately above the top liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The commission will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 centimeters (one foot). The leachate collection and removal system must be:

(A) constructed of materials that are:

(i) chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(B) designed and operated to function without clogging through the scheduled closure of the landfill.

(b) The owner or operator will be exempted from the requirements of subsection (a) of this section if the commission finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §335.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992, must comply with 40 CFR 264.301(c) as amended through January 29, 1992, at 57 FedReg 3489.

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that such design and operating practices, together with location characteristics:

(1) will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) of this section; and

(2) will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics in 40 Code of Federal Regulations §261.24, and is in compliance with either paragraph (1) or (2) of this subsection.

(1) The monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking;

(B) is located more than ¼ mile from an underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)); and

(C) is in compliance with groundwater monitoring requirements of this subchapter.

(2) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement landfill unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(*o*)(1)(A)(i) and (*o*)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

(h) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(i) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

(k) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

Source: The provisions of this §335.173 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective March 18, 1991, 16 TexReg 1369; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.174. Closure and Post-Closure Care (Landfills)

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(1) provide long-term minimization of migration of liquids through the closed landfill;

(2) function with minimum maintenance;

(3) promote drainage and minimize erosion or abrasion of the cover;

(4) accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator must comply with all post-closure requirements contained in 40 Code of Federal Regulations §§264.117-264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under 40 Code of Federal Regulations §264.117). The owner or operator must:

(1) maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) continue to operate the leachate collection and removal system until leachate is no longer detected;

(3) maintain and monitor the leak detection system in accordance with 40 CFR §264.301(c)(3)(iv) and (4) and §264.303(c), and comply with all other applicable leak detection system requirements of this subchapter.

(4) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of §§335.156-335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program);

(5) prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(6) protect and maintain surveyed benchmarks used in complying with 40 Code of Federal Regulations §264.309.

Source: The provisions of this §335.174 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.175. Special Requirements for Bulk and Containerized Waste

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically (e.g., by mixing with a sorbent solid), so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) To demonstrate the absence or presence of free liquids in either a containerized or bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 Code of Federal Regulations (CFR) §260.11 and in §335.30 of this title (relating to Incorporation of References).

(d) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited, unless the owner or operator of such landfill demonstrates to the commission, or the commission determines, that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains or may reasonably be anticipated to contain hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)).

(e) Containers holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

(1) the container is very small, such as an ampule; or

(2) the container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(3) the container is a lab pack as defined in 40 CFR §264.316 and is disposed of in accordance with 40 CFR §264.316.

Source: The provisions of this §335.175 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective February 26, 1996, 21 TexReg 1142; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.176. Special Requirements for Containers

Unless they are very small, such as an ampule, containers must be crushed, shredded, or similarly reduced in volume to the maximum extent practical before burial in a landfill.

Source: The provisions of this §335.176 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.177. General Performance Standard

No person may cause, suffer, allow, or permit the storage, processing, or disposal of hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of hazardous waste, hazardous or non-

hazardous constituents, or any other materials resulting from industrial solid waste activities, including, but not limited to, reaction products, into or adjacent to the waters in the state without specific authorization for such discharge from the Texas Water Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health or welfare.

Source: The provisions of this §335.177 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.178. Cost Estimate for Closure

In addition to the requirements of 40 Code of Federal Regulations §264.142 (excluding 40 Code of Federal Regulations §264.142(a)(2)), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither the parent nor a subsidiary of the owner or operator (see definition of parent corporation in 40 Code of Federal Regulations §264.141(d)). Not-withstanding other closure costs, such estimate must also include the costs associated with third party removal, shipment, off-site, and processing or disposal off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

(1) maximum inventory of wastes in storage and/or processing units, including, but not limited to, storage surface impoundments, waste piles, tanks, and containers;

(2) wastes generated as a result of closure activities (e.g., decontamination, removal of liquids from surface impoundments, or waste piles);

(3) contaminated stormwater; and

(4) leachate.

Source: The provisions of this §335.178 adopted to be effective July 14, 1987, 12 TexReg 2106.

Cross References: This Section cited in 30 TAC §305.50, (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.154, (relating to Reporting Requirements for Owners and Operators); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

§ 335.179. Financial Assurance

(a) Before a permit may be issued, amended, extended or renewed for a solid waste facility for storage, processing, or disposal of hazardous waste, the commission shall determine the type or types of financial assurance which may be used by the applicant to comply with applicable regulations.

(b) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit has been issued, amended, extended or renewed, the permittee shall execute the financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility.

(c) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow as provided by the commission an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(d) In addition to other forms of financial assurance authorized by the commission regulations, an applicant may use the letter of credit form of financial assurance if either the issuing institution or another institution which guarantees payment under the letter:

(1) is a bank chartered by the state or by the federal government; and

(2) is federally insured and its financial practices are regulated by the state or the federal government.

Source: The provisions of this §335.179 adopted to be effective January 5, 1988, 12 TexReg 4846.

Cross References: This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

§ 335.180. Impact of New Hazardous Waste Management Facilities on Local Land Use

In evaluating an application for a new hazardous waste management facility permit, the commission shall assess the impact of the proposed facility on local land use in the area, including any relevant land use plans in existence before publication of the notice of intent to file a solid waste permit application, or, if no notice of intent is filed, at the time the permit application is filed.

(1) In determining whether a new hazardous waste management facility is compatible with local land use, the commission shall consider, at a minimum:

~~(A) the location of industrial and other~~ waste-generating facilities in the area;

(B) the amounts of hazardous waste generated by those facilities;

(C) the risks associated with the transportation of hazardous waste to the facility; and

(D) compatibility of the application with any land use plan adopted pursuant to the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), or with local planning, zoning, or land use laws and ordinances in existence before publication of the notice of intent to file a solid waste permit application, or, if no notice of intent is filed, at the time the permit application is filed.

(2) In addition, the commission may consider any of the following criteria in determining compatibility of a facility with local land use:

(A) the risk of fires or explosions from improper storage and disposal methods;

(B) the distance from the site boundary to existing structures; and

(C) location of the facility in relation to high-hazard areas such as 100-year hurricane flood zones.

(3) Based on its assessment of the application with respect to local land use, the commission may deny an application in accordance with §305.66(i) of this title (relating to Revocation and Suspension) or impose permit conditions deemed necessary to minimize or mitigate detrimental impacts on local land use, in accordance with §305.148 of this title (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use).

Authority: The provisions of this §335.180 issued under the Texas Water Code, §5.104 and §26.011.

Source: The provisions of this §335.180 adopted to be effective November 7, 1991, 16 TexReg 6065.

Cross References: This Section cited in 30 TAC §305.66, (relating to Permit Denial, Suspension, and Revocation); 30 TAC §305.148, (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use).

§ 335.181. Need for Specific Commercial Hazardous Waste Management Technologies

In evaluating an application for a new commercial hazardous waste management facility permit, the commission shall determine the need for the specific technology proposed in the facility to manage new or increased volumes of waste generated ~~in the state, in accordance with the Texas Solid~~ Waste Disposal Act, §361.0232.

Authority: The provisions of this §335.181 issued under the Texas Water Code, §5.104 and §26.011.

Source: The provisions of this §335.181 adopted to be effective November 7, 1991, 16 TexReg 6065.

§ 335.182. Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility

In evaluating an application for a new commercial hazardous waste management facility permit, if the commission determines that a burden on public roadways will be imposed by the new commercial hazardous waste management facility, the commission shall require the applicant to pay the cost of the improvements necessary to minimize or mitigate the burden. The standards by which the commission shall make such a determination may include, but are not limited to, the requirements found in any of the following:

(1) Policy on Geometric Design of Highways and Streets, published by the American Association of State Highways and Transportation Officials (1990);

(2) Texas Manual on Uniform Traffic Control Devices;

(3) Highway Capacity Manual, published by the National Highway Institute;

(4) Highway Design Division and Procedures Manual, published by the Texas Department of Highways and Public Transportation; and

(5) Texas Flexible Pavement Design System.

Authority: The provisions of this §335.182 issued under the Texas Water Code, §5.104 and §26.011.

Source: The provisions of this §335.182 adopted to be effective November 7, 1991, 16 TexReg 6065.

Cross References: This Section cited in 30 TAC §305.66, (relating to Permit Denial, Suspension, and Revocation).

§ 335.183. Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities

(a) In evaluating an application for a new commercial hazardous waste management facility permit, the commission shall verify that:

(1) sufficient emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located; or

(2) the applicant has secured sufficient financial assurance in accordance with

~~§305.50(12)(C)(ii) or (D) of this title (relating to~~ Additional Requirements for an Application for a Solid Waste Permit) to fund the emergency response personnel and equipment determined to be necessary by the commission, to manage a reasonable worst-case emergency condition associated with the operation of the facility.

(b) If the applicant for a new commercial hazardous waste management facility intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located, the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. An appropriate entity would be defined as a professional organization, existing at the time of application, regularly doing business in the area of emergency and/or disaster response.

(c) If financial assurance is required pursuant to this section, it shall meet the following requirements.

(1) The financial assurance must benefit the county government or municipal government in the county in which the facility is located or proposed to be located, or both.

(2) The financial assurance must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment.

(3) The financial assurance must meet the requirements of §305.50(12)(C)(ii) or (D) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

(d) In evaluating the sufficiency of emergency response capabilities, the commission shall consider the following:

(1) geology of the area;

(2) drainage patterns;

(3) seasonally prevailing winds and weather patterns;

(4) availability of all local emergency response resources, including fire, police, hospital, etc. service;

(5) proximity of human exposure and/or sensitive environmental receptors;

~~(6) length of time for first response;~~

~~(7) trained response teams on-site (OSHA specialist level), with a 24-hour response team;~~

(8) the amount of equipment and trained personnel available on a first-response basis, including the minimum amount of equipment on hand or available near the facility with hazardous materials capabilities;

(9) the ability to deal with various types of injuries;

(10) the ability to respond effectively to environmental contamination; and

(11) the efficiency and safety of any evacuation plan submitted by the applicant.

Authority: The provisions of this §335.183 issued under the Texas Water Code, §5.104 and §26.011.

Source: The provisions of this §335.183 adopted to be effective November 7, 1991, 16 TexReg 6065.

Cross References: This Section cited in 30 TAC §305.50, (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit).

Subchapter G. LOCATION STANDARDS FOR HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL

Cross References: This Subchapter cited in 30 TAC §335.152, (relating to Standards).

§ 335.201. Purpose, Scope, and Applicability

(a) This subchapter establishes minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste. Except as otherwise provided in this section, this subchapter applies to permit applications for new hazardous management facilities and areal expansions of existing hazardous waste management facilities, filed on or after September 1, 1984. These sections do not apply to the following:

(1) permit applications submitted pursuant to §335.2(c) of this title (relating to Permit Required), §335.43(b) of this title (relating to Permit Required), and §335.45(b) of this title (relating to Effect on Existing Facilities), including any revision submitted pursuant to §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits);

(2) permit applications filed pursuant to §335.2(a) of this title (relating to Permit Required) which have been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which have been de-

cleared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984; and

~~(3) on-site remedial actions conducted pursu~~ant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 United States Code §9601 et seq., as amended by the Superfund Amendments Reauthorization Act of 1986 or the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §13.

(b) The standards contained in §§335.204(a)(6)-(9), 335.204(b)(7)-(12), 335.204(c)(6)-(11), 335.204(d)(6)-(11), 335.204(e)(8)-(13) are not applicable to facilities that have submitted a notice of intent to file a permit application pursuant to §335.391 of this title (relating to Pre-Application Review) prior to May 3, 1988, or to facilities that have filed permit applications pursuant to §335.2(a) of this title (relating to Permit Required) which were submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and that were declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to May 3, 1988.

(c) The purpose of this subchapter is to condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a site that reasonably minimizes possible contamination of surface water and groundwater; to define the characteristics that make an area unsuitable for a hazardous waste management facility; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable, unless the design, construction and operational features of the facility will prevent adverse effects from unsuitable site characteristics. Nothing herein is intended to restrict or abrogate the commission's general authority under the Solid Waste Disposal Act to review site suitability for all facilities which manage municipal hazardous waste or industrial solid waste.

Source: The provisions of this §335.201 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective September 1, 1986, 11 TexReg 3696; amended to be effective May 3, 1988, 13 TexReg 1913.

§ 335.202. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

~~Active geologic processes—Any natural process~~ which alters the surface and/or subsurface of the earth, including, but not limited to, erosion (including shoreline erosion along the coast), submergence, subsidence, faulting, karst formation, flooding in alluvial flood wash zones, meandering river ~~bank cutting, and earthquakes.~~

Aquifer—A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Portions of formations, such as clay beds, which are not capable of yielding a significant amount of groundwater to wells or springs are not aquifers.

~~Area subject to active shoreline erosion—A coastal area where shoreline erosion has been documented within historic time.~~

Areal expansion of an existing facility—The enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit authorizing the facility.

~~Areas of direct drainage—Those land areas from which surface water runoff could flow into a lake used to supply public drinking water.~~

~~Commercial hazardous waste management facili~~ty—Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

Critical habitat of an endangered species—An area that is determined by the United States Fish and Wildlife Service to be a critical habitat for an endangered species.

Erosion—The group of natural processes, including weathering, deterioration, detachment, dissolution, abrasion, corrosion, wearing away, and transportation, by which earthen or rock material is ~~removed from any part of the earth's surface.~~

Existing hazardous waste management facility—Any facility used for the storage, processing, or disposal of hazardous waste and which is authorized by a hazardous waste permit. Facilities iden-

tified in the following pending applications will also be considered existing hazardous waste management facilities pending final action on the application by the commission:

(A) an application submitted pursuant to §335.2(c) of this title (relating to Permit Required), §335.43(b) of this title (relating to Permit Required), and §335.45(b) of this title (relating to Effect on Existing Facilities), including any revisions made in accordance with §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits); or

(B) an application filed pursuant to §335.2(a) of this title (relating to Permit Required) which has been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which has been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984.

New hazardous waste management facility—Any facility to be used for the storage, processing, or disposal of hazardous waste and which is not an existing hazardous waste management facility.

One hundred-year floodplain—Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

~~Public water system—A system for the provision~~ to the public of piped water for human consumption, if such system has at least 15 service connections or regularly services an average of at least 25 ~~individuals daily at least 60 days out of the year.~~

Regional aquifer—An aquifer which has been identified by the Texas Water Commission as a major or minor aquifer. Major aquifers yield large quantities of water in large areas of the state. Minor aquifers yield large quantities of water in small areas of the state or small quantities of water in large areas of the state. (These aquifers are identified in Appendix B of the Texas Department of Water Resources Report Number 238.)

~~Residence—The structure and surrounding property within the property boundaries not to exceed 100 feet from the structure in all directions.~~

Secondary containment—A system designed and constructed to collect rainfall runoff, to prevent rainfall run-on from outside the structure, and to contain waste spills, leaks, or discharges within the structure until such waste can be removed.

Sole-source aquifer—An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e), which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health. The Edwards Aquifer has been designated a sole-source aquifer by the United States Environmental Protection Agency. The Edwards Aquifer recharge zone is specifically that area delineated on maps in the offices of the executive director.

Storage surface impoundment—A surface impoundment from which all wastes and waste-contaminated soils are removed at the time of closure of the impoundment.

Wetlands—Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Source: The provisions of this §335.202 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective September 1, 1986, 11 TexReg 3696; amended to be effective May 3, 1988, 13 TexReg 1913; amended to be effective November 7, 1991, 16 TexReg 6065; amended to be effective March 20, 1992, 17 TexReg 1737.

Cross References: This Section cited in 30 TAC §335.205, (relating to Prohibition of Permit Issuance).

§ 335.203. Site Selection To Protect Groundwater or Surface Water

The commission may not issue a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of surface water and groundwater. In making this determination, the commission shall consider the following factors:

(1) active geologic processes such as flooding, erosion, subsidence, submergence, and faulting;

(2) groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge or discharge conditions;

(3) soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer and points of discharge to surface water; and

(4) climatological conditions.

Source: The provisions of this §335.203 adopted to be effective May 28, 1986, 11 TexReg 2347.

Cross References: This Section cited in 30 TAC §335.205, (relating to Prohibition of Permit Issuance).

§ 335.204. Unsuitable Site Characteristics

(a) Storage or processing facilities (excluding storage surface impoundments).

(1) A storage or processing facility (excluding storage surface impoundments) may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood event. "Physical transport" does not include movement of hazardous waste by an owner or operator to move the hazardous waste to safety during the threat of a 100-year flood event.

(2) A storage or processing facility (excluding storage surface impoundments) may not be located in wetlands.

(3) A storage or processing facility (excluding storage surface impoundments) may not be located on the recharge zone of a sole-source aquifer unless secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges.

(4) A storage or processing facility (excluding storage surface impoundments) may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the facility by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7}centimeters per second (cm/sec), or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges.

(5) A storage or processing facility (excluding storage surface impoundments) may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) secondary containment is provided to preclude migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

~~(6) A storage or processing facility (excluding~~ storage surface impoundments) may not be located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(7) A storage or processing facility (excluding storage surface impoundments) may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(8) A storage or processing facility may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(9) A storage or processing facility may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual ~~observation of the proposed site.~~

(b) Land treatment facilities.

(1) A land treatment facility may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent

physical transport of any hazardous waste by a 100-year flood event. A new commercial hazardous waste management facility land treatment unit may not be located in a 100-year floodplain, unless the applicant demonstrates to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(2) A land treatment facility may not be located in wetlands.

(3) A land treatment facility may not be located in the recharge zone of a sole-source aquifer.

(4) A land treatment facility may not be located in areas overlying regional aquifers unless:

(A) it is an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate of the facility by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the treatment zone; or

(B) the regional aquifer is separated from the base of the treatment zone by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7}cm/sec, or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A land treatment facility may not be located in areas where soil unit(s) within five feet of the treatment zone have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5}cm/sec, unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A land treatment facility may not be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the commission, or if no such notice is filed, at the time the permit application is filed with the commission. The measurement of distances required for a new hazardous waste land treatment facility shall be taken from a perimeter around the proposed new hazardous waste land treatment management unit. The perimeter shall be not more than 75 feet from the edge of the proposed new hazardous waste land treatment unit.

~~(7) A land treatment facility may not be located~~ in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(8) A land treatment facility may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(9) A land treatment facility may not be located within 1,000 feet of an area subject to active coastal shoreline erosion if the area is protected by a barrier island or peninsula unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(10) A land treatment facility may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(11) A land treatment facility may not be located on a barrier island or peninsula.

(12) A land treatment facility may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the ~~identified zone of deformation and the combined~~

~~uncertainties in locating a fault trace, must be~~ determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation ~~of the proposed site.~~

(c) Waste piles.

(1) A waste pile may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood event. "Physical transport" does not include movement of hazardous waste by an owner or operator to move the hazardous waste to safety during the threat of a 100-year flood event.

(2) A waste pile may not be located in wetlands.

(3) A waste pile may not be located on the recharge zone of a sole-source aquifer.

(4) A waste pile may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7}cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) secondary containment is provided to preclude pollutant migration to groundwater from spills, leaks, or discharges.

(5) A waste pile may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5}cm/sec unless:

(A) secondary containment is provided to preclude pollutant migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

~~(6) A waste pile may not be located in areas of~~ direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(7) A waste pile may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(8) A waste pile may not be located within 1,000 feet of an area subject to active coastal shoreline erosion if the area is protected by a barrier island or peninsula unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(9) A waste pile may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(10) A waste pile may not be located on a barrier island or peninsula.

(11) A waste pile may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined ~~uncertainties in locating a fault trace, must be~~

~~determined by a qualified geologist or geotechnical~~ engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(d) Storage surface impoundments.

(1) A storage surface impoundment may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood event. "Physical transport" does not include movement of hazardous waste by an owner or operator to move the hazardous waste to safety during the threat of a 100-year flood event.

(2) A storage surface impoundment may not be located in wetlands.

(3) A storage surface impoundment may not be located on the recharge zone of a sole-source aquifer.

(4) A storage surface impoundment may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7}cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) the impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment.

(5) A storage surface impoundment may not be located in areas where the soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5}cm/sec unless:

(A) the impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

~~(6) A storage surface impoundment may not be~~ located in areas of direct drainage within one mile of a lake at its maximum conservation pool level, if the lake is used to supply public drinking water through a public water system, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(7) A storage surface impoundment may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(8) A storage surface impoundment may not be located within 1,000 feet of an area of active coastal shoreline erosion if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(9) A storage surface impoundment may not be located in the critical habitat of an endangered species of plant and animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(10) A storage surface impoundment may not be located on a barrier island or peninsula.

(11) A storage surface impoundment may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility ~~will prevent adverse effects resulting from fault~~

~~movement. The presence, and if a fault is found~~ to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual ~~observation of the proposed site.~~

(e) Landfills. Any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

(1) ~~Except as provided in subparagraphs (A) and (B) of this paragraph,~~ a landfill may not be located in the 100-year floodplain existing prior to site development except in areas with flood depths less than three feet. Any landfill within the 100-year floodplain must be designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood ~~event~~.

~~(A) The areal expansion of a landfill in a~~ 100-year floodplain may be allowed by the commission if the applicant demonstrates to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(B) A new commercial hazardous waste management facility landfill unit may not be located in a 100-year floodplain, unless the applicant demonstrates to the satisfaction of the commission that the facility design will prevent the physical transport of any hazard~~ous waste by a 100-year flood event.~~

(2) A landfill may not be located in wetlands.

(3) A landfill may not be located on the recharge zone of a sole-source aquifer.

(4) A landfill may not be located in areas overlying regional aquifers unless:

(A) it is in an area where the average annual evaporation exceeds the average annual rainfall by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the containment structure; or

(B) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7}cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A landfill may not be located in areas where the soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5}cm/sec unless:

(A) it is an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A landfill may not be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the commission, or if no such notice is filed, at the time the permit application is filed with the commission. The measurement of distances required for a new hazardous waste landfill shall be taken from a perimeter around the proposed new hazardous waste landfill. The perimeter shall be not more than 75 feet from the edge of the proposed new hazardous waste landfill unit.

(7) A landfill at which hazardous waste is received for a fee may not be located in the 100-year floodplain of a perennial stream, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, VO, or V1-30. This provision shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the commission as of September 1, 1985.

~~(8) A landfill may not be located in areas of~~ direct drainage within one mile ~~of a lake~~ at its maximum conservation ~~pool~~ level, if the lake is used to supply public drinking water through a ~~public water system, unless the design, construc-~~

tion, and operational features of the facility will prevent adverse effects resulting from a release in such areas.

(9) A landfill may not be located in areas of active geologic processes unless the design, construction, and operational features of the facility will prevent adverse effects resulting from the geologic processes.

(10) A landfill may not be located within 1,000 feet of an area subject to active coastal shoreline erosion, if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(11) A landfill may not be located in the critical habitat of an endangered species of plant or animal unless the design, construction, and operational features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(12) A landfill may not be located on a barrier island or peninsula.

(13) A landfill may not be located within 30 feet of the upthrown side or 50 feet of the downthrown side of the actual or inferred surface expression of a fault that has reasonably been shown to have caused displacement of shallow Quaternary sediments or of man-made structures, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from fault movement. The presence, and if a fault is found to be present, the width and location of the actual or inferred surface expression of a fault, including both the identified zone of deformation and the combined uncertainties in locating a fault trace, must be determined by a qualified geologist or geotechnical engineer. For purposes of fault assessment under this paragraph, depths of shallow sediments to be considered could be as little as 100 feet (for older, slowly accumulated sediments), or as great as 300 feet (for younger, rapidly accumulated sediments). The fault study should include analyses of any electric logs developed for any required subsurface characterization of the site, interpretation of available aerial photographs, study of available maps, logs, and documents that may indicate fault locations at the surface and in the subsurface, and a visual observation of the proposed site.

(14) For purposes of this subchapter, any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

(f) Injection wells. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited.

Source: The provisions of this §335.204 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective May 3, 1988, 13 TexReg 1913; amended to be effective November 7, 1991, 16 TexReg 6065.

Cross References: This Section cited in 30 TAC §335.205, (relating to Prohibition of Permit Issuance).

§ 335.205. Prohibition of Permit Issuance

(a) The commission shall not issue a permit for a new hazardous waste management facility or an areal expansion of an existing facility if the facility or expansion does not meet the requirements of §335.204 of this title (relating to Unsuitable Site Characteristics).

(b) The commission shall not issue a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed of at the landfill.

(c) No permit shall be issued for a new commercial hazardous waste management facility as defined in §335.202 of this title (relating to Definitions) including such facilities that burn or propose to burn waste-derived fuel, as defined in this section, or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(d) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with subsection (c) of this section, distances shall be measured from an established residence, church, school, day care

~~center, surface water body used for a public drink~~ing water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(e) No permit shall be issued for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than ½ mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park unless the applicant demonstrates to the satisfaction of the commission that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries.

(f) The measurement of distances required in subsections (a) and (c)-(e) of this section shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by subsections (a) and (c)-(e) of this section do not apply to an established residence, church, school, day care center, surface water body used for a public drinking supply, or dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(g) The measurement of distances required in subsections (a) and (c)-(e) of this section shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

(h) No permit shall be issued for a Class I injection well, a proposed hazardous waste management facility other than a Class I injection well, or a capacity expansion of an existing hazardous waste management facility if a fault exists within 2 ½ miles from the proposed or existing wellbore of the Class I injection well or the area within the cone of influence whichever is greater, or if a fault exists within 3,000 feet of the proposed hazardous waste management facility other than a Class I injection well or of the capacity expansion of an existing hazardous waste management facility unless the applicant demonstrates to the satisfaction of the commission unless previously demonstrated to the commission or to the United States Environmental Protection Agency that:

(1) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(2) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(A) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous waste will be conducted; and

(B) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(i) Nothing in this subchapter shall be construed to require the commission to issue a permit notwithstanding a finding that the proposed facility would satisfy the requirements of §335.203 of this title (relating to Site Selection To Protect Groundwater or Surface Water) and notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to §335.204 of this title (relating to Unsuitable Site Characteristics).

~~(j) The term "waste-derived fuel," when used in~~ this section, shall mean any material resulting from the blending or inclusion of hazardous waste that is to be burned for energy recovery. Such fuel does not include material derived from nonhazardous waste such as nonhazardous waste garbage, rubbish, refuse, tires, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, or other nonhazardous waste solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, or agricultural operations or from ~~community or institutional activities.~~

Source: The provisions of this §335.205 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective November 7, 1991, 16 TexReg 6065; amended to be effective July 29, 1992, 17 TexReg 5017.

~~§ 335.206. Petitions for Rulemaking~~

Local governments may petition the commission for a rule which restricts or prohibits the siting of a new hazardous waste management facility in areas including, but not limited to, those meeting one or more of the characteristics delineated in the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon), §361.022, and §335.204 of this title (relating to Unsuitable Site Characteristics). Such petitions shall be submitted in writing and shall comply with the requirements of §275.78 of this title (relating to Petition for Adoption of Rules). No rule adopted by the commission under this section shall affect the siting of a new hazardous waste management facility if an application or a notice of intent to file an application with respect to such facility has been filed with the commission prior to the filing of a petition under this section.

Source: The provisions of this §335.206 adopted to be effective May 28, 1986, 11 TexReg 2347; amended to be effective April 23, 1991, 16 TexReg 2053.

SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

Cross References: This Subchapter cited in 30 TAC §335.2, (relating to Permit Required); 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.23, (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.41, (relating to Purpose, Scope and Applicability); 30 TAC §335.43, (relating to Permit Required).

RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

§ 335.211. Applicability

(a) The regulations of §§335.211-335.214 of this title (relating to Recyclable Materials Used in a Manner Constituting Disposal) apply to recyclable materials that are applied to or placed on the land:

(1) without mixing with any other substance(s);

(2) after mixing or combination with any other substance(s). These materials will be referred to throughout this subpart as materials used in a manner that constitutes disposal.

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means and if such products meet the applicable treatment standards in 40 Code of Federal Regulations, Subpart D, of Part 268 (or applicable prohibition levels in §268.32 or RCRA, §3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation provided they meet these same treatment standards or prohibition levels for each recyclable material that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.

Source: The provisions of this §335.211 adopted to be effective May 28, 1986, 11 TexReg 2348; amended to be effective August 30, 1988, 13 TexReg 4072; amended to be effective November 23, 1993, 18 TexReg 8218.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.211, (relating to Applicability); 30 TAC §335.214, (relating to Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal).

§ 335.212. Standards Applicable to Generators and Transporters of Materials Used in a Manner That Constitutes Disposal

Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

Source: The provisions of this §335.212 adopted to be effective May 28, 1986, 11 TexReg 2348.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.211, (relating to Applicability).

§ 335.213. Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users

Owners or operators of facilities that store recyclable materials that are to be used in a manner

that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

Source: The provisions of this §335.213 adopted to be effective May 28, 1986, 11 TexReg 2348.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.211, (relating to Applicability).

§ 335.214. Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal

~~(a) Owners or operators of facilities that use~~ recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter O of this chapter (relating to Land Disposal Restrictions), Chapter 305 of this title (relating to ~~Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263~~ of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements). These requirements do not apply to products which contain these recyclable materials under the provisions of §335.211(b) of this title (relating to Applicability).

(b) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability) for dust suppression or road treatment is prohibited.

Source: The provisions of this §335.214 adopted to be effective May 28, 1986, 11 TexReg 2348; amended to be effective March 1, 1996, 21 TexReg 1425.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.211, (relating to Applicability).

HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

§ 335.221. Applicability and Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, September 5, 1991, June 22, 1992, August 25, 1992, September 30, 1992, July 20, 1993, November 9, 1993, and September 19, 1994, issues of the Federal Register (see 56 FedReg 7239, 56 FedReg 32688, 56 FedReg 42504, 56 FedReg 43874, 57 FedReg 27880, 57 FedReg 28558, 57 FedReg 44999, 58 FedReg 38816, 58 FedReg 59598, and 59 FedReg 48042-48043):

(1) §266.100—Applicability, except §266.100(b);

(2) §266.102(a)—Permit Standards for Burners—Applicability, excepting those portions of §266.102(a) containing references to §§264.56(d),

264.71-264.72, 264.75-264.77, 264.90, 264.101, and 264.142(a)(2);

(3) §266.102(b)—Permit Standards for Burners—Hazardous Waste Analysis;

(4) §266.102(c)—Permit Standards for Burners—Emission Standards;

(5) §266.102(d)—Permit Standards for Burners—Permits;

(6) §266.102(e)—Permit Standards for Burners—Operating Requirements;

(7) §266.103(a)(1)-(3)—Interim Status Standards for Burners—Purpose, Scope, and Applicability—General; Exemptions; and Prohibition on Burning Dioxin-Listed Wastes, respectively, except §266.103(a)(1)(iii) and (2);

(8) §266.103(a)(4)—Interim Status Standards for Burners—Purpose, Scope, and Applicability—Applicability of Part 265 Standards, excepting those portions of §266.103(a)(4) containing references to §§265.56(d), 265.71-265.72, 265.75-265.77, 265.142(a)(2); facilities qualifying for a corporate guarantee for liability are subject to §265.147(g)(2) and §264.151(h)(2), as amended;

(9) §266.103(a)(5)-(6)—Interim Status Standards for Burners—Purpose, Scope, and Applicability: Special Requirements for Furnaces; and Restrictions on Burning Hazardous Waste That is Not a Fuel;

(10) §266.103(b)—Interim Status Standards for Burners—Certification of Precompliance, except §266.103(b)(1) and (6);

(11) §266.103(c)—Interim Status Standards for Burners—Certification of Compliance, except §266.103(c)(3)(i);

(12) §266.103(f)—Interim Status Standards for Burners—Start-Up and Shut-Down;

(13) §266.103(g)(1)-(2)—Interim Status Standards for Burners—Automatic Waste Feed Cutoff;

(14) §266.103(h)-(*l*)—Interim Status Standards for Burners: Fugitive Emissions; Changes; Monitoring and Inspections; Recordkeeping; and Closure, respectively;

(15) §266.104—Standards to Control Organic Emissions except §266.104(i);

(16) §266.105—Standards to Control Particulate Matter except §266.105(c) and except as provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities);

(17) §266.106—Standards to Control Metals Emissions, except §266.106(i);

(18) §266.107—Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas (Cl_2) Emissions, except §266.107(h);

(19) §266.108—Small Quantity On-Site Burner Exemption, except §266.108(d), and except that hazardous wastes subject to §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) may not be burned in an off-site device under the exemption provided by §266.108;

(20) §266.109—Low-Risk Waste Exemption;

(21) §266.110—Waiver of DRE Trial Burn for Boilers;

(22) §266.111—Standards for Direct Transfer; and

(23) §266.112—Regulation of Residues.

(b) The following hazardous wastes and facilities are not regulated under §§335.221-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces):

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the United States Environmental Protection Agency under 40 CFR Part 279 and Chapter 324 of this title (relating to Used Oil). This exception does not apply if the used oil has been made hazardous by mixing with characteristic or listed hazardous waste other than by a CESQG or household generator;

(2) hazardous wastes that are exempt from regulation under the provisions of 40 CFR §261.4 and §335.24(c)(4)-(7) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators);

(3) gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery; and

(4) coke ovens, if the only hazardous waste burned is EPA Hazardous Waste Number K087, decanter tank tar sludge from coking operations.

Source: The provisions of this §335.221 adopted to be effective September 1, 1986, 11 TexReg 3697; amended to be effective July 14, 1987, 12 TexReg 2106; amended to be effective July 29, 1992, 17 TexReg 5017; amended to be effective March 1, 1996, 21 TexReg 1425; amended to be effective March 6, 1996, 21 TexReg 2400; amended to be effective November 20, 1996, 21 TexReg 10983.

Cross References: This Section cited in 30 TAC §335.6, (relating to Notification Requirements); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.223, (relating to Additional Permit Standards for Burners); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.222. Management Prior to Burning

(a) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(b) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste).

(c) Storage facilities. The provisions listed under paragraph (1) of this subsection apply to storage or processing by burners and by intermediaries such as processors, blenders, and distributors between the generator and the burner.

(1) Owners and operators of facilities that store or process hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of the following, except as provided by paragraph (2) of this subsection:

(A) Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General);

(B) Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions);

(C) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), except §335.112(a)(12)-(19) of this title (relating to Standards);

(D) Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), except §335.152(11)-(16) of this title (relating to Standards);

(E) Chapter 305 of this title (relating to Consolidated Permits).

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulations under the small quantity burner provisions of 40 Code of Federal Regulations §266.108, only hazardous waste that they generate are exempt from regulation under the provisions listed in paragraph (1) of this subsection applicable to storage units for those units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage or processing of hazardous waste by such owners and operators prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (1) of this subsection.

Source: The provisions of this §335.222 adopted to be effective July 29, 1992, 17 TexReg 5017; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.223. Additional Permit Standards for Burners

(a) In addition to the permit standards for burners under §335.221(a)(2)-(6) of this title (relating to Applicability and Standards), owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows:

(1) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(2) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(3) §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(4) §335.154 of this title (relating to Reporting Requirements for Owners and Operators);

(5) §335.155 of this title (relating to Additional Reports);

(6) §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(7) §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(8) §335.178 of this title (relating to Cost Estimate for Closure).

(b) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit, pursuant to 40 Code of Federal Regulations (CFR) §266.102, and §335.221(a)(1)-(6) of this title (relating to Applicability and Standards), and subsection (a)(1)-(8) of this section, will be regarded as compliance with 40 CFR §§266.104-266.107. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of 40 CFR §§266.104-266.107 may be "good cause" for justifying suspension or revocation of a permit under §305.66 of this title (relating to Permit Denial, Suspension, and Revocation) or may be "good cause" for amendment of the permit under §305.62(d)(2) of this title (relating to Amendment).

Source: The provisions of this §335.223 adopted to be effective July 29, 1992, 17 TexReg 5017.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.224. Additional Interim Status Standards for Burners

In addition to the interim status standards for burners under §335.221(a)(7)-(14) of this title (relating to Applicability and Standards), owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows.

(1) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the owner or operator must comply with the applicable rules and regulations dealing with permit amendments or modifications under Chapter 305 of this title (relating to Consolidated Permits) and 40 Code of Federal Regulations (CFR) §270.42, or revisions of applications for hazardous waste permits and changes during interim status under Chapter 305 of this title (relating to Consolidated Permits) and 40 CFR §270.72.

(2) The requirements of this section and §335.221(a)(7)-(14) of this title (relating to Applicability and Standards) do not apply to hazardous wastes and facilities exempt under §335.221(b) of this title or exempt under 40 CFR §266.108, as adopted under §335.221(a)(19) of this title.

(3) Owners and operators of existing boilers and industrial furnaces that burn hazardous waste are subject to the following provisions:

(A) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(B) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(C) §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(D) §335.114 of this title (relating to Reporting Requirements);

(E) §335.115 of this title (relating to Additional Reports);

(F) §335.127 of this title (relating to Cost Estimate for Closure).

(4) The owner or operator must provide complete and accurate information specified in 40 CFR §266.103(b)(2) to the executive director on or before August 21, 1992, and must establish limits for the operating parameters specified in 40 CFR §266.103(b)(3). Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in 40 CFR §266.103(b)(3), the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, HCl and Cl_2 are not likely to exceed the limits provided under 40 CFR §§266.105, 266.106, and 266.107. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under 40 CFR §266.103(b)(3) until the owner or operator submits a revised certification of precompliance under 40 CFR

§266.103(b)(8) or a certification of compliance under 40 CFR §266.103(c), or until a permit is issued.

(5) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §305.103(b)(2)-(12) of this title (relating to Notice by Mail). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 Code of Federal Regulations §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 Code of Federal Regulations §266.103(b) and 30 TAC §335.224(4) and (5)." An owner or operator who satisfied the public notice requirements under 40 Code of Federal Regulations §266.103(b)(6) will be considered compliant with this paragraph provided that the owner or operator submits evidence of such public notice on or before 30 days after the effective date of this paragraph. The notice shall include:

(A) name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;

(B) date that the certification of precompliance was submitted to the executive director;

(C) brief description of the regulatory process required to comply with the interim status requirements of this section, §335.221(a)(7)-(14) of this title (relating to Applicability and Standards), and 40 CFR §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl_2 ;

(D) types and quantities of hazardous waste burned including, but not limited to, source(s), whether solids or liquids, as well as an appropriate description(s) of the waste(s);

(E) type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;

(F) types and quantities per year of other fuels and industrial furnace feedstocks fed to each unit;

(G) brief description of the basis for this certification of precompliance as specified in 40 CFR §266.103(b)(2);

(H) locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:

(i) The administrative record kept by the local Texas Natural Resource Conservation Commission regional office; and

(ii) The BIF correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the Regional Director of the EPA, state and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and state site visit reports submitted to the owner or operator.

(I) notification of the establishment by the facility owner or operator of a facility mailing list whereby interested parties shall notify the facility owner or operator that they wish to be placed on the mailing list to receive future information and notices about this facility; and

(J) location (mailing address) of the local Texas Natural Resource Conservation Commission (TNRCC) regional office, where further information can be obtained on TNRCC regulation of hazardous waste burning.

(6) On or before August 21, 1992, the owner or operator shall conduct emissions testing to document compliance with the emissions standards of 40 CFR §§266.103(a)(5)(i)(D), 266.104(b)-(e), 266.105, 266.106, and 266.107, under the procedures prescribed by this paragraph and paragraphs (7) and (8) of this section and 40 CFR §266.103(c), except under extensions of time provided by 40 CFR §266.103(c)(7). Based on the compliance test, the owner or operator shall submit to the executive director a complete and accurate "certification of compliance," in accordance with 40 CFR §266.103(c)(4), with those emission standards establishing limits on the operating parameters specified in 40 CFR §266.103(c)(1). In accordance with paragraphs (12) and (13) of this section, the executive di-

rector may reject the certification of compliance or require additional information to be submitted within specified time frames.

(7) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 Code of Federal Regulations (CFR) §266.103(b) and paragraphs (4) and (5) of this section, and under conditions established in the notification of compliance testing required by 40 CFR §266.103(c)(2). The owner and operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of §266.103(c).

(8) If the owner or operator chooses to submit a revised certification of compliance (recertification of compliance) under 40 CFR §266.103(c)(8), or if the owner or operator is required to submit a recertification of compliance under paragraph (9) or (11) of this section, then the owner or operator shall submit the recertification of compliance to the executive director under the procedures in 40 CFR §266.103(c)(8)(i)-(iv). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(9) The owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR §266.103(c), within 150 days of rejection by the executive director under this paragraph and paragraphs (6) and (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames. Except for the activities necessary for the owner or operator to conduct the compliance testing in accordance with 40 CFR §266.103(c)(8)(i)-(iv), and except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon rejection by the executive director and until a subsequent recertification of compliance is approved under paragraph (8) of this section, the owner or operator shall not burn hazardous waste in the unit for which a certification of compliance or recertification of compliance was rejected.

(10) Except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon receipt of the third rejection by the executive director of a certification of compliance and/or recertification of compliance for the burning of hazardous waste in a boiler or industrial furnace, the owner or operator shall stop burning hazardous waste in the unit for which the certification and/or recertification were rejected, begin closure activities under 40 CFR §266.103(*l*), and shall not resume the burning of hazardous waste except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits).

(11) Notwithstanding any requirement for a recertification under paragraph (9) of this section, the owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR §266.103(c) within three years from submitting the previous certification or recertification (excluding recertification(s) submitted under paragraph (9) of this section). If the owner or operator seeks to recertify compliance under new operating conditions, then the owner or operator must comply with the requirements of paragraph (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(12) The executive director may reject certifications or recertifications of compliance based on the failure of the owner or operator to meet the substantive requirements under 40 CFR §266.103 or this section, including, but not limited to, the following:

(A) incorrect or inappropriate calculations or other mathematical techniques which lead to

significant effects on operating condition limitations;

(B) incorrect or inappropriate sampling, physical measurements, or analysis techniques which lead to significant effects on operating condition limitations;

(C) equipment failure or malfunction during the compliance test which leads to inadequate results or incorrect results which significantly affects the limits on operating conditions;

(D) inappropriate feed rates of waste, raw production materials, and/or fuels which leads to significant effects on operating condition limitations;

(E) failure to operate the compliance test under steady-state conditions; or

(F) other significant deficiencies which, in the opinion of the executive director will lead to endangerment to public health and welfare or insufficient protection of public property or the environment.

(13) The owner or operator may appeal to the commission any rejection of a certification or recertification by the executive director. Owners and operators who appeal to the commission any rejection of a certification or recertification by the executive director may continue operations under the rejected certification or recertification until the rejection is upheld by the commission.

(14) If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (4)-(6), (9), or (11) of this section, hazardous waste burning must terminate on the date of the deadline, closure activities must begin under 40 Code of Federal Regulations §266.103(*l*), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits). For purposes of compliance with the closure provisions of paragraph (4) of this subsection and 40 Code of Federal Regulations §265.112(d)(2) and §265.113 (as adopted in §335.112(a)(6) of this title (relating to Standards)) the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

(15) During the compliance test required by paragraph (7) of this section and 40 CFR §266.103(c)(3), and upon certification of compliance under 40 CFR §266.103(c), a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in 40 CFR §266.103(c)(1)(i) and (v)-(xiii) deviate from those established in the certification of compliance, and the boiler or industrial furnace must be operated in accordance with 40 CFR §266.103(g)(1)-(2).

Source: The provisions of this §335.224 adopted to be effective July 29, 1992, 17 TexReg 5017; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 26, 1996, 21 TexReg 1142.

Cross References: This Section cited in 30 TAC §305.571, (relating to Applicability); 30 TAC §305.573, (relating to Interim Status and Trial Burn Requirements); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.225. Additional Standards for Direct Transfer

(a) The requirements of this section and 40 Code of Federal Regulations (CFR) §266.111, adopted by reference at §335.221(a)(22) of this title (relating to Applicability and Standards), apply to owners and operators of boilers and industrial furnaces subject to 40 CFR §266.102 or §266.103, if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.

(b) The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not adversely affect the capability of the boiler or industrial furnace to meet the standards provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

Source: The provisions of this §335.225 adopted to be effective July 29, 1992, 17 TexReg 5017.

Cross References: This Section cited in 30 TAC §305.50, (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.226. Standards for Burning Hazardous Waste in Commercial Combustion Facilities

In addition to the applicable requirements under §§335.221-335.225 of this title (relating to Applicability and Standards; Management Prior to Burning; Additional Permit Standards for Burners; Additional Interim Status Standards for Burners; and

Additional Standards for Direct Transfer, respectively), no person shall cause, suffer, allow, or permit the burning of hazardous waste in a combustion unit at any facility that accepts such hazardous waste from off-site sources which involves a commercial transaction or a change in ownership of the waste and for which the combustion unit is not regulated by the United States Environmental Protection Agency at 40 Code of Federal Regulations (CFR), Part 264 or 265, Subpart O, or by the Texas Water Commission at §335.112(a)(14) or §335.152(a)(13) of this title (relating to Standards), unless the following requirements are met. Where compliance with any of the applicable requirements under §§335.221-335.229 of this title (relating to Applicability and Standards; Management Prior to Burning; Additional Permit Standards for Burners; Additional Interim Status Standards for Burners; Additional Standards for Direct Transfer; Testing Requirements for Commercial Hazardous Waste Combustion Facilities; Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities; and Operating Requirements for Commercial Hazardous Waste Combustion Facilities, respectively) would result in lower emission rates of particulate matter, hydrogen chloride, chlorine gas, metals, carbon monoxide, hydrocarbons, or principal hazardous organic constituents than the emission rates that would result from compliance with another requirement under §§335.221-335.229 of this title, then the owner or operator shall comply with the applicable requirements which would result in lower emission rates.

(1) Particulate emissions shall not exceed 0.18 gram per dry standard cubic meter or 0.08 grain per dry standard cubic foot, to include particulate matter caught by impinger train, when corrected for 7.0% oxygen in the stack gas according to the formula specified in §111.121(1) of this title (relating to Single, Dual, and Multiple-Chamber Incinerators).

(2) Hydrogen chloride (HCl) emissions greater than 1.8 kilograms (four pounds) per hour shall be controlled with a minimum removal efficiency of 95%.

(3) Except as provided by 40 CFR §266.104(a)(3)-(5), destruction and removal efficiency (DRE) shall be at least 99.99% for each principal organic hazardous constituent (POHC) in each waste feed. The POHCs shall be selected according to the method at 40 CFR Part 264.342 and shall be approved in advance by the executive director. DRE shall be determined using the following formula.

$$DRE = \left(1 - \frac{W_{out}}{W_{in}}\right) \times 100\%$$

in which

W_{in} = the mass feed rate of an approved POHC in the waste stream feeding the combustion facility;

and

W_{out} = the mass emission rate of the same POHC, expressed in the same units as the mass feed rate used in W_{in}, present in exhaust emissions of the combustion device prior to release to the atmosphere

(4) The facility shall perform a trial burn according to the requirements listed at 40 CFR Part 270.62 to determine compliance with paragraphs (1)-(3) of this section. The operating conditions and waste feed composition during a trial burn demonstrating compliance with the requirements of paragraphs (1)-(3) of this section shall be maintained as limits for subsequent operation of the facility. Substitution of new hazardous waste constituents and increases in the concentration of any hazardous waste constituent compared to the conditions existing during the trial burn will require retesting unless such change or substitution has received written approval from the executive director. The operating limits shall be monitored continuously and shall include the following:

(A) maximum carbon monoxide level in the exhaust gas of the combustion device;

(B) minimum oxygen level in the exhaust gas of the combustion device;

(C) maximum waste feed rate to the combustion device;

(D) minimum combustion temperature;

(E) an appropriate indicator of combustion gas velocity;

(F) maximum total hydrocarbons in the exhaust gas of the combustion device; and

(G) any other operating limit determined necessary by the executive director to ensure that the requirements of paragraphs (1)-(3) of this section are met.

(5) The facility shall not burn any chlorinated hazardous waste or hazardous waste containing any of the following metals unless an enforceable emission limit has been established which is designed to protect public health for each metal

and for toxic products of incomplete combustion.

Metals	
Arsenic	Chromium
Antimony	Lead
Barium	Mercury
Beryllium	Silver
Cadmium	Thallium

(6) The facility shall maintain an automatic waste feed cutoff system which shall activate if the facility is not operating within the limits determined in accordance with paragraph (4) of this section and shall remain activated until the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(7) During start-up or shutdown of the facility, hazardous waste fuels must not be fed into the combustion zone unless the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(8) Fugitive emissions from the combustion zone shall be controlled by maintaining the combustion zone pressure lower than atmospheric pressure or by keeping the combustion zone totally sealed to prevent fugitive emissions.

(9) Compliance with the requirements of paragraphs (1)-(4) and (6)-(8) of this section shall be accomplished prior to the burning of any hazardous waste, except for such burning which is necessary to conduct the required trial burn. Compliance with paragraph (5) of this section shall be as soon as practicable but no later than July 31, 1992. This paragraph applies to facilities burning hazardous waste under state or federal interim status prior to the effective date of this section. Facilities not burning hazardous waste under interim status which are permitted after that date will be subject to compliance dates specified by permit.

Source: The provisions of this §335.226 adopted to be effective July 29, 1992, 17 TexReg 5017.

Cross References: This Section cited in 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.225, (relating to Additional Standards for Direct Transfer); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities); 30 TAC §335.227, (relating to Testing Requirements for Commercial Hazardous Waste Combustion Facilities); 30 TAC §335.228, (relating to Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities); 30 TAC §335.229, (relating to Operating Requirements for Commercial Hazardous Waste Combustion Facilities).

§ 335.227. Testing Requirements for Commercial Hazardous Waste Combustion Facilities

Compliance with §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities) shall be demonstrated by application of the test methods included in §111.125 of this title (relating to Testing Requirements). Test reports prepared to demonstrate compliance with §335.226 shall clearly document the operating conditions and waste feed composition existing during the test.

Source: The provisions of this §335.227 adopted to be effective July 29, 1992, 17 TexReg 5017.

Cross References: This Section cited in 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

§ 335.228. Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities

(a) The owner or operator of a commercial combustion facility subject to the requirements of §335.226 or §111.125 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities, and Testing Requirements, respectively) shall maintain written records of all monitoring and testing results, hours of operation, and quantity of waste burned. Such records shall be retained for a period of not less than three years. Such records shall be made available upon request by authorized representatives of the commission, the Texas Air Control Board, the United States Environmental Protection Agency (EPA), or local air pollution control agencies.

(b) The owner or operator of a commercial combustion facility subject to the requirements of §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities) shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the waste feed rate, combustion gas velocity, opacity, oxygen content, carbon monoxide (CO) content, total hydrocarbon (THC) content, and temperature of the exhaust gas of the combustion device. CO and THC shall be corrected to 7.0% oxygen, reported on a dry basis, and measured in the same location. The oxygen, THC, CO, combustion gas velocity, and opacity devices must be certified for use following procedures outlined in 40 Code of Federal Regulations Part 60. Such certification must be approved by the executive

director or by his designated representative. Compliance determinations may be made based on results of monitoring with a certified monitor.

Source: The provisions of this §335.228 adopted to be effective July 29, 1992, 17 TexReg 5017.

Cross References: This Section cited in 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities); 30 TAC §335.229, (relating to Operating Requirements for Commercial Hazardous Waste Combustion Facilities).

§ 335.229. Operating Requirements for Commercial Hazardous Waste Combustion Facilities

The owner or operator of commercial combustion facilities subject to the requirements of §§335.226, 111.125, or 335.228 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities; Testing Requirements; and Monitoring and Recordkeeping Requirements for Commercial Hazardous Waste Combustion Facilities), respectively, shall meet the requirements of §111.129 of this title (relating to Operating Requirements).

Source: The provisions of this §335.229 adopted to be effective July 29, 1992, 17 TexReg 5017.

Cross References: This Section cited in 30 TAC §335.221, (relating to Applicability and Standards); 30 TAC §335.226, (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities).

RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

§ 335.241. Applicability and Requirements

(a) The regulations of this section apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under this section are subject to the following requirements:

(1) §335.4 of this title (relating to General Prohibitions);

(2) §335.6 of this title (relating to Notification Requirements); and

(3) §§335.9-335.12 of this title (relating to Shipping and Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste; and Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), for generators, transporters, or persons who store, as applicable.

(c) Persons who store recyclable materials that are regulated under this section shall keep the following records to document that they are not accumulating these materials speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) records showing the volume of these materials stored at the beginning of the calendar year;

(2) the amount of these materials generated or received during the calendar year; and

(3) the amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this section that are accumulated speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), and Chapter 273 of this title (relating to Procedures After Final Decision).

Source: The provisions of this §335.241 adopted to be effective May 28, 1986, 11 TexReg 2349.

Cross References: This Section cited in 30 TAC §335.1, (relating to Definitions); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

SPENT LEAD-ACID BATTERIES BEING RECLAIMED

§ 335.251. Applicability and Requirements

(a) The regulations of this section apply to persons who reclaim spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them, are not subject to regulation under this chapter, Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Intro-

ductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearing), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), or Chapter 273 of this title (relating to Procedures After Final Decision). Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

(b) Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:

(1) all applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards of Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), except for the requirements in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and 40 Code of Federal Regulations §265.13; and

(2) all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures Before Public Hearing), Chapter 267 of this title (relating to Procedures During Public Hearings), Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner), Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission), and Chapter 273 of this title (relating to Procedures After Final Decision.)

Source: The provisions of this §335.251 adopted to be effective May 28, 1986, 11 TexReg 2349; amended to be effective July 14, 1987, 12 TexReg 2106.

~~Subchapter I. PROHIBITION ON OPEN DUMPS~~

~~§ 335.301. Purpose~~

~~The purpose of this subchapter is to authorize the executive director to evaluate nonhazardous industrial solid waste land disposal facilities and~~ practices in order to determine whether the facilities or practices constitute open dumps.

Source: The provisions of this §335.301 adopted to be effective May 28, 1986, 11 TexReg 2350.

§ 335.302. Prohibitions

(a) Any solid waste management practice or disposal of industrial solid waste which constitutes the open dumping of industrial solid waste is prohibited, except in the case of any practice or disposal of industrial solid waste under a timetable or schedule for compliance established under the Resource Conservation and Recovery Act of 1976, §4005(c), and §335.304 of this title (relating to Classification of Facilities).

(b) Where a schedule for compliance has not been established by the executive director, no person may cause, suffer, allow, or permit any activity of disposal of industrial solid waste at a facility which has been classified as an open dump by the executive director.

Source: The provisions of this §335.302 adopted to be effective May 28, 1986, 11 TexReg 2350.

§ 335.303. Criteria for Classification of Solid Waste Disposal Facilities and Practices

Except to the extent that they are clearly inconsistent with the express provisions of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the rules of the commission, the regulations contained in 40 Code of Federal Regulations, Part 257 are adopted by reference. The executive director will maintain in the offices of the commission a set of the regulations contained in 40 Code of Federal Regulations, Part 257 and adopted by reference herein. The regulations may be examined in the library of the Texas Water Commission, Stephen F. Austin Building, 1700 North Congress, Austin.

Source: The provisions of this §335.303 adopted to be effective May 28, 1986, 11 TexReg 2350.

§ 335.304. Classification of Facilities

The executive director may evaluate all existing solid waste disposal facilities, except those exempted under 40 Code of Federal Regulations §257.1, according to the criteria in 40 Code of Federal Regulations, Part 257. The executive director shall classify as open dumps all facilities which fail to satisfy these criteria and shall prepare a list of ~~those facilities. This list shall be submitted to the~~

U.S. Environmental Protection Agency for inclusion in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005.

Source: The provisions of this §335.304 adopted to be effective May 28, 1986, 11 TexReg 2350.

Cross References: This Section cited in 30 TAC §335.302, (relating to Prohibitions); 30 TAC §335.307, (relating to Notification of Classification by Commission).

§ 335.305. Upgrading or Closing of Open Dumps

(a) All existing industrial solid waste disposal facilities which are classified as open dumps shall be upgraded or closed in accordance with measures specified by the commission so that the facility or practice no longer violates the criteria in 40 Code of Federal Regulations Part 257.

(b) The executive director may establish a timetable or schedule of compliance for any facility classified as an open dump where the facility owner or operator has demonstrated that other public or private alternatives to comply with the prohibition on open dumping have been considered and such alternatives to so comply cannot be utilized. The schedule of compliance shall specify a schedule of remedial measures and an enforceable sequence of actions leading to compliance within a reasonable time, not to exceed five years from the date of publication of the inventory under the Resource Conservation and Recovery Act of 1976, §4005.

(c) Nothing in this section precludes the executive director from seeking any relief deemed necessary for violation of this subchapter, any provision of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or any other regulations of the commission nor does this section establish any prerequisite for seeking that relief.

Source: The provisions of this §335.305 adopted to be effective May 28, 1986, 11 TexReg 2350.

§ 335.306. List of Interested or Affected Persons

The commission shall maintain a current list of agencies, organizations, and individuals affected by or interested in the state plan developed pursuant to the Resource Conservation and Recovery Act of 1976, Subtitle D, which shall include any parties that request to be on the list, the owner or operator of each facility classified as an open dump, and any other parties which the commission determines to be affected or interested in the plan.

Source: The provisions of this §335.306 adopted to be effective May 28, 1986, 11 TexReg 2350.

Cross References: This Section cited in 30 TAC §335.307, (relating to Notification of Classification by Commission).

§ 335.307. Notification of Classification by Commission

(a) Upon determination by the commission that a facility or practice violates any of the criteria set forth in 40 Code of Federal Regulations, Part 257 and should be in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005(b), the owner or operator of such facility shall be so notified in writing by the commission at least 30 days prior to the initial submission of the classification to the U.S. Environmental Protection Agency. If the owner or operator wishes to contest that determination, he must so notify the commission within 20 days of the date of the notification and include any information indicating that the facility does not violate any of the criteria classification set forth in 40 Code of Federal Regulations, Part 257 If the owner or operator fails to respond to the notification, or if the commission determines that the information provided by the owner or operator does not affect its initial determination, the commission shall forward the name of the facility to the U.S. Environmental Protection Agency for publication in the Federal Register. The commission may delete the name of a facility from the list to be forwarded to the U.S. Environmental Protection Agency if, in the opinion of the commission, the information presented by the owner or operator pursuant to this subsection shows that the facility or practice does not violate any of the criteria set forth in 40 Code of Federal Regulations, Part 257.

(b) The commission shall also provide written notification of the availability of the results of any classification pursuant to §335.304 of this title (relating to Classification of Facilities) to all other persons on the list required by §335.306 of this title (relating to List of Interested or Affected Persons) at least 30 days prior to the initial submission of any classifications to the U. S. Environmental Protection Agency.

Source: The provisions of this §335.307 adopted to be effective May 28, 1986, 11 TexReg 2350.

§ 335.308. Complaints

To encourage public participation, the commission shall respond to complaints and other information received from the public which relate to any facility evaluated under this subchapter.

~~Source: The provisions of this §335.308 adopted to be effective~~ May 28, 1986, 11 TexReg 2350.

SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

Authority: The provisions of this Subchapter J issued under the Health and Safety Code, Chapter 361, as amended by House Bill 1986, Acts of the 72nd Legislature, 1991.

Cross References: This Subchapter cited in 30 TAC §330.601, (relating to Purpose and Applicability).

§ 335.321. Purpose

(a) It is the purpose of this subchapter to establish an industrial solid waste and hazardous waste fee program. Under this program the following fees are imposed:

(1) an annual fee on each generator of Class I industrial solid waste or hazardous waste;

(2) an annual fee on each facility which either holds a Class I industrial solid waste or hazardous waste permit or operates Class I industrial solid waste or hazardous waste management units subject to permit authorization;

(3) a fee on the operator of a commercial solid waste disposal facility for Class I industrial waste which is disposed on site by the facility;

(4) a fee on the operator of a hazardous waste storage, processing, or disposal facility for hazardous waste which is managed on site by the facility; and

(5) a fee on each application for a permit for an industrial solid waste or hazardous waste facility assessed under §305.53 of this title (relating to Application Fees).

(b) Hazardous and solid waste fees fund.

(1) The hazardous and solid waste fees fund shall be used for the purpose of regulation of industrial solid waste and hazardous waste, including payment to other state agencies for services provided under contract relating to enforcement of the Health and Safety Code, Chapter 361.

(2) The fund shall consist of:

(A) generation fees assessed under §335.323 of this title (relating to Generation Fee Assessment);

(B) facility fees assessed under §335.324 of this title (relating to Facility Fee Assessment);

(C) hazardous waste management fees and Class I industrial waste disposal fees assessed ~~and apportioned under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment);~~

(D) application fees assessed under §305.53 of this title (relating to Application Fees); and

(E) interest penalties for late payment of industrial solid waste and hazardous waste fees imposed by §335. 331 of this title (relating to Failure To Make Payment or Report).

(c) Hazardous and solid waste remediation fee fund.

(1) The hazardous and solid waste remediation fee fund shall be used for the purpose of the following:

(A) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action;

(B) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if funds from a liable party have been collected and deposited in the fund for that purpose or if funds from a liable party, independent third party, or the federal government are not sufficient for the maintenance;

(C) expenses related to complying with the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 United States Code §§9601 et seq.) as amended, the federal Superfund Amendments and Reauthorization Act of 1986 (10 United States Code §§2701 et seq.), and the Health and Safety Code, Chapter 361, Subchapters F and I;

(D) expenses concerning the regulation and management of household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances; and

(E) expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment.

(2) The fund shall consist of:

(A) hazardous waste management fees and Class I industrial waste disposal fees assessed and apportioned under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment);

(B) interest and penalties imposed under §335.331 of this title (relating to Failure To Make Payment or Report);

(C) money paid by a person liable for facility cleanup and maintenance under provisions of the Health and Safety Code, §361.197;

(D) interest received from the investment of the fund in accounts under the charge of the treasurer; and

(E) monies collected on behalf of the commission or transferred from other agencies under any applicable provisions of the Health and Safety Code, including §361.138 concerning fees on lead-acid batteries, or grants from any person made for the purpose of remediation of facilities under the Health and Safety Code, Chapter 361.

(d) Waste management fees collected under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) shall be credited to the funds of the state as follows.

(1) One quarter, or 25%, of the waste management fee collected from a commercial waste storage, processing, or disposal facility shall be credited to the hazardous and solid waste fees fund to be distributed to the county in which the facility paying the fee is located. Funds due the affected county shall be paid by the commission within 60 days of the receipt and verification of payments from a commercial hazardous waste facility in the county.

(2) The remaining amount of commercial waste management fees and the total amount of noncommercial waste fees shall be deposited as follows.

(A) One half, or 50%, of each amount shall be credited to the hazardous and solid waste remediation fee fund.

(B) One half, or 50%, of each amount shall be credited to the hazardous and solid waste fees fund.

Source: The provisions of this §335.321 adopted to be effective October 31, 1985, 10 TexReg 4090; amended to be effective July 3, 1986, 11 TexReg 2894; amended to be effective January 5, 1988, 12 TexReg 4844; amended to be effective September 12, 1990, 15 TexReg 4957; amended to be effective March 19, 1992, 17 TexReg 1737; amended to be effective February 16, 1994, 19 TexReg 802.

§ 335.322. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Affidavit of exclusion—A sworn statement by a permit applicant in support of an exclusion or exemption from permitting pursuant to §335.2(c) of this title (relating to Permit Required) or §335.43(b) of this title (relating to Permit Required).

Authorized hazardous waste management unit—A unit at a hazardous waste management facility which is authorized by permit or which is identified in an application submitted pursuant to and in accordance with §335.2(c) of this title (relating to Permit Required) or §335.43(b) of this title (relating to Permit Required).

Captured facility—A manufacturing or production facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed, or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

Class I waste—Any industrial solid waste or mixture of industrial solid wastes meeting the definition of Class I waste under §335.1 of this title (relating to Definitions).

Class I nonhazardous waste—Any Class I waste which is not a hazardous waste as defined in this section.

Commercial hazardous waste storage, processing, and disposal facility—Any facility which accepts a hazardous waste for storage, processing (including incineration), or disposal from an off-site generator for a charge.

Commercial waste storage, processing, and disposal facility—Any facility which accepts an industrial solid waste or a hazardous waste for storage, processing (including incineration), or disposal for a charge.

Dry weight—The weight of all constituents other than water.

Generator—Any person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to become subject to regulation by the commission.

Generator of hazardous waste or generator—Any person whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation by the commission.

~~Hazardous waste—These solid wastes not other~~wise exempted which have been identified or listed as hazardous wastes by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, 42 United States Code §6901 et seq., as amended.

Hazardous waste fuel—A hazardous waste or blend of hazardous wastes to be burned for energy recovery which, for the purposes of assessment of fees under this section, is not subject to regulation under 40 Code of Federal Regulations, Part 264 (or Part 265), Subpart O, concerning incinerators.

Industrial solid waste—A solid waste meeting the definition of industrial solid waste under §335.1 of this title (relating to Definitions).

Injection well—As provided in the Texas Water Code, §27.002(11).

Interim status—The status of any person who owns or operates a facility required to have a permit under this chapter, and who is required to submit an application for a permit pursuant to §335.2(c) of this title (relating to Permit Required) or §335.43(b) of this title (relating to Permit Required).

Land disposal facility—Any landfill, surface impoundment (excluding an impoundment treating, processing, or storing waste that is disposed pursuant to Texas Water Code, Chapter 26 or Chapter 27), waste pile, facility at which land farming, land treatment, or a land application process is used, or an injection well. Land disposal does not include the normal application of agricultural chemicals or fertilizers.

Noncommercial waste storage, processing, or disposal facility—Any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, (including incineration), or disposal for no charge or that stores, processes, or disposes of wastes generated on site by the facility.

On-site land disposal facility—A hazardous waste unit which meets the definition of land disposal facility of this section and on-site disposal as defined in §335.1 of this title (relating to Definitions).

Processing—For the purposes of this subchapter, the term "processing" has the same meaning as defined in §335.1 of this title (relating to Definitions).

Recycled—For the purposes of this subchapter, a waste is recycled if it is used, reused, or reclaimed in a manner consistent with the definition of a ~~recyclable material or nonhazardous recyclable material under §335.17 of this title~~ (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials).

Source: The provisions of this §335.322 adopted to be effective October 31, 1985, 10 TexReg 4090; amended to be effective July 3, 1986, 11 TexReg 2894; amended to be effective September 1, 1986, 11 TexReg 3697; amended to be effective September 12, 1990, 15 TexReg 4957; amended to be effective March 19, 1992, 17 TexReg 1737; amended to be effective February 16, 1994, 19 TexReg 802.

Cross References: This Section cited in 30 TAC §335.325, (relating to Industrial So..d Waste and Hazardous Waste Management Fee Assessment).

§ 335.323. Generation Fee Assessment

(a) An annual generation fee is hereby assessed each industrial solid waste generator which has notified under §335.6 of this title (relating to Notification Requirements) and which generates Class 1 industrial solid waste or hazardous waste or whose act first causes such waste to become subject to regulation under Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions) on or after September 1, 1985. These fees shall be deposited in the hazardous and solid waste fee fund. The amount of a generation fee is determined by the total amount of Class 1 nonhazardous waste or hazardous waste generated during the previous calendar year. The annual generation fee may not be less than $50. The annual generation fee for hazardous waste shall not be more than $50,000 and for nonhazardous waste not more than $10,000.

(b) Wastewaters are exempt from assessment under the following conditions.

(1) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations, Part 261, Subpart C, concerning characteristics of hazardous waste, and are rendered non-hazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) are exempt from the assessment of hazardous waste generation fees.

(2) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a ~~Class 1 waste under the provisions of §335.505 of~~

this title (relating to Class 1 Waste Determination) and are treated on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(3) These exemptions or adjustments in fee assessment in no way limit a generator's obligation to report such waste generation or waste management activity under any applicable provision of this chapter.

(4) A wastewater stream treated to meet a different waste classification is subject to only one assessment under this section.

(c) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(d) Wastes which are recycled shall be exempt from any generation fee assessed under this section.

(e) Generation fees are to be assessed according to the following schedule:

(1) hazardous waste:

Waste Reported (Tons)	Annual Fee
Less than 1 ton	No charge
From 1–50 tons	$100
Greater than 50 tons	$2.00 per ton

(2) non-hazardous waste:

Waste Reported (Tons)	Annual Fee
Less than 1 ton	No charge
From 1–100 tons	$50
Greater than 100 tons	$.50 per ton

(f) Any claim of exemption from or adjustment to the assessment of a generation fee under this section must be made in writing to the executive director prior to the due date of the assessment.

Source: The provisions of this §335.323 adopted to be effective October 31, 1985, 10 TexReg 4090; amended to be effective January 5, 1988, 12 TexReg 4844; amended to be effective September 12, 1990, 15 TexReg 4957; amended to be effective March 19, 1992, 17 TexReg 1737; amended to be effective February 16, 1994, 19 TexReg 802; amended to be effective April 24, 1995, 20 TexReg 2709; amended to be effective March 1, 1996, 21 TexReg 1475.

Cross References: This Section cited in 30 TAC §335.321, (relating to Purpose).

§ 335.324. Facility Fee Assessment

(a) An annual facility fee is hereby assessed on each permittee who holds one or more Class I industrial solid waste or hazardous waste permits and each facility operating a Class I industrial solid waste or hazardous waste management unit subject to permit authorization. These fees shall be deposited in the hazardous and solid waste fees fund. The fee for each year is assessed on each facility for which a permit or the requirement to comply with permit authorization is in effect during any part of the fiscal year.

(b) An applicant who has, prior to September 1, submitted an affidavit of exclusion from permit requirements, shall not be subject to the annual facility fee, pending a decision by the commission on the affidavit of exclusion. If the commission determines that the facility is subject to the permit requirement, the applicant shall pay the fee within 30 days or is subject to the penalties for late payment established under §335.331 of this title (relating to Failure To Make Payment or Report).

(c) An applicant who files an affidavit after September 1 shall be subject to the annual facility fee for the billing year in which the affidavit is filed. The applicant shall not be subject to the annual facility fee for the following year, pending a decision by the commission on the affidavit of exclusion. If the commission determines that the facility is subject to the permit requirement, the applicant shall pay the fee within 30 days or is subject to the penalties for late payment established herein.

(d) The annual facility fee assessed is the cumulative total of fees for all Class I industrial solid waste or hazardous waste management units at the facility which are authorized by permit or subject to authorization on September 1, 1991, and September 1 of each year thereafter. The minimum fee for each hazardous waste facility shall be $2,500. The maximum fee for each hazardous waste facility shall be $25,000. The minimum fee for each facility authorized to manage only nonhazardous waste shall be $500 and the maximum fee $5,000.

(e) A fee under this section for storage or processing in tanks or containers will not be assessed against the owner or operator of an elementary neutralization unit or wastewater treatment unit exempt from the requirement of a permit under §335.41(d) of this title (relating to Purpose, Scope, and Applicability).

(f) An "other unit," for the purposes of subsection (i) of this section, is an incinerator, thermal

~~processing unit, or other processing unit, not other~~wise listed in subsection (i) of this section, used for waste reduction, recycling, or hazard reduction and subject to compliance with permit requirements.

(g) For facilities which require post-closure care permits, the fee for a closed unit shall apply. A fee is assessed for each unit which received waste after January 26, 1983, and which has been closed pursuant to an approved closure plan and which is subject to the post-closure care permit requirements. Disposal units which are closed in a manner such that all hazardous wastes and hazardous constituents are removed pursuant to an approved closure plan are not subject to the fee.

(h) The facility fee assessment in subsection (i)(2)-(5) of this section shall be based on the surface area of the waste management unit in which the storage, treatment, or disposal of waste has been authorized.

(i) Facility fees shall be assessed according to the following schedule.

Type of Waste Management Unit	Fee Rate: Nonhazardous Waste	Fee Rate: Hazardous Waste
(1) Storage/Processing (Tanks or Containers)	$250	$.02/gallon
(2) Land Treatment	$400/surface acre	$4,000/surface acre
(3) Waste Pile	$400/surface acre	$4,000/surface acre
(4) Surface Impoundment	$500/surface acre	$5,000/surface acre
(5) Landfill	$500/surface acre	$5,000/surface acre
(6) Injection Well	$1,000/well	$10,000/well
(7) Closed Disposal Unit	$250/unit	$2,500/unit
(8) Other Unit	$250/unit	$2,500/unit

Source: The provisions of this §335.324 adopted to be effective October 31, 1985, 10 TexReg 4090; amended to be effective July 3, 1986, 11 TexReg 2894; amended to be effective September 1, 1986, 11 TexReg 3697; amended to be effective January 5, 1988, 12 TexReg 4844; amended to be effective March 19, 1992, 17 TexReg 1737.

Cross References: This Section cited in 30 TAC §335.321, (relating to Purpose).

§ 335.325. Industrial Solid Waste and Hazardous Waste Management Fee Assessment

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing, or disposal facility, except as provided in subsections (b)-(e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed, or otherwise managed and for Class I industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing, or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) ~~or §335.41 of this title (relating to Purpose, Scope, and Applicability) is not subject~~ to a hazardous waste management fee.

(b) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) The storage, processing, or disposal of industrial solid waste or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(d) A fee shall not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes if such wastes are stored within the time periods allowed by and in accordance with the provisions of §335.69 of this title (relating to Accumulation Time).

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface waters of the state. For the purpose of this section, the management of a hazardous waste in a surface impoundment which is not exempt from assessment under this subsection will be assessed the fee for processing under subsection (j) of this section.

(f) The waste management fee authorized under this section shall be based on the total weight or volume of a waste except for wastes which are disposed of in an underground injection well, in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.326 of this title (relating to Dry Weight Determination).

(g) The hazardous waste management fee for wastes generated in this state shall not exceed $40 per ton for wastes which are landfilled.

(h) The operator of a waste storage, processing, or ~~disposal facility receiving industrial solid waste~~

~~or hazardous waste from out-of-state generators~~ shall be assessed the fee amount required on wastes generated in state plus an additional increment to be established by rule, except as provided in subsection (k) of this section.

(i) For the purposes of subsection (j) of this section, energy recovery means the burning or incineration of a hazardous waste fuel and fuel processing means the handling of a waste fuel, including storage and blending, prior to its disposal by burning.

(j) Except as provided in subsections (k)-(p) of this section, waste management fees shall be assessed according to the following schedule.

(1) Hazardous waste.

	Noncommercial		Commercial	
Disposition	In State	Imported	In State	Imported
Landfill	$15/ton	$19/ton	$30/ton	$37.50/ton
Land Treatment	$12/ton	$15/ton	$24/ton	$30/ton
Underground Injection	$9/dwt	$11/dwt	$18/dwt	$22.50/dwt
Incineration	$8/ton	$10/ton	$16/ton	$20/ton
Processing	$4/ton	$5/ton	$8/ton	$10/ton
Storage	$1/ton	$1/ton	$2/ton	$2/ton
Energy Recovery	$4/ton	$4/ton	$8/ton	$8/ton
Fuel Processing	$3/ton	$3/ton	$6/ton	$6/ton

(2) Class I nonhazardous waste.

	Noncommercial		Commercial	
Disposition	In State	Imported	In State	Imported
Landfill	N/A	N/A	$6/ton	$7.50/ton
Land Treatment	N/A	N/A	$4.80/ton	$6/ton
Underground Injection	N/A	N/A	$3.60/dwt	$4.50/dwt
Incineration	N/A	N/A	$3.20/ton	$4/ton

(k) For wastes which are generated out of state, the fee will be that specified in subsection (j) of this section, except that the fee for the storage, processing, incineration, and disposal of hazardous waste fuels shall be the same for wastes generated out of state and in state.

(*l*) Except as provided in subsection (m) of this section, only one waste management fee shall be paid for a waste managed at a facility. In any instance where more than one fee could be applied under this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to ~~the quantity of waste in any month which has been~~ in storage for more than 90 days or the number for which an extension has been granted under §335.69 of this title (relating to Accumulation Time).

(n) A facility which receives waste transferred from another facility shall pay any waste management fee applicable under this section and shall not receive credit for any fee applied to the management of the waste at the facility of origin.

(*o*) The fee rate for incineration of aqueous wastes containing 5.0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section.

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reports). No fee for disposal of a solid waste under Chapter 330, Subchapter P, shall be assessed in addition to a fee for disposal under this section.

(q) An operator of a hazardous waste injection well electing to separately measure inorganic salts in the determination of dry weight under the provisions of §335.326(c) of this title (relating to Dry Weight Determination) shall pay a fee equivalent to 20% of the fee for underground injection assessed in subsection (j) of this section for the components of the waste stream determined to be inorganic salts.

Source: The provisions of this §335.325 adopted to be effective March 19, 1992, 17 TexReg 1737; amended to be effective February 16, 1994, 19 TexReg 802; amended to be effective October 16, 1995, 20 TexReg 7993.

Cross References: This Section cited in 30 TAC §335.321, (relating to Purpose); 30 TAC §335.326, (relating to Dry Weight Determination); 30 TAC §335.328, (relating to Fees Payment); 30 TAC §335.329, (relating to Records and Reports).

§ 335.326. Dry Weight Determination

(a) The method of calculating the dry weight of each waste stream subject to assessment under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) shall be determined initially and at any time the waste stream undergoes a significant change in water content using the appropriate method(s) as specified in this section. Determinations shall be made from a representative sample collected by grab or composite. Collection methods and sample preservation shall be by methods to ~~minimize volatilization.~~

(1) Wastes which contain suspended solids greater than or equal to 15% of the sample on a weight basis shall have the dry weight determination calculated using the method specified in Appendix I in §335.332 of this title (relating to Appendices I and II).

(2) Aqueous-based wastes which contain suspended solids less than 15% of the sample by weight basis and which contain a single liquid phase shall have the dry weight determination calculated using Standard Methods for the Examination of Water and Wastewater, 15th Edition, Method 209A, pages 92-93, or equivalent method in later editions.

(3) Organic-based wastes which contain suspended solids less than 15% of the sample by weight and which contain a single liquid phase shall have the dry weight determination calculated using:

(A) 1981 Annual Book of ASTM Standards, Part 30, Method E203, pages 803-812, or equivalent method in later editions; or

(B) the method specified in Appendix II in §335.332 of this title (relating to Appendices I and II).

(4) Wastes which do not meet any of the criteria specified in paragraphs (1)-(3) of this subsection shall have the dry weight determination calculated using:

(A) the 1981 Annual Book of ASTM Standards, Part 23, Method D96, pages 64-81, or equivalent method in later editions; or

(B) the method specified in Appendix II in §335.332 of this title (relating to Appendices I and II); or

(C) the 1981 Annual Book of ASTM Standards, Part 23, Method D95, pages 59-63, or equivalent method in later editions. Method D96 determines the water and sediment content of the sample. The calculations shall be modified to determine only the water content.

(5) The method for calculating the dry weight shall be that method specified in Appendix I in §335.332 of this title (relating to Appendices I and II) or an alternate method selected by the generator pursuant to §335.327 of this title (relating to Alternate Methods of Dry Weight Determination), if the waste cannot be analyzed by one of the other required methods of this section due to interfering constituents. Documentation identifying the method of analysis and describing the interference shall be maintained by the generator.

(b) Wastes containing free liquids which are designated for disposal in a landfill and must be solidified prior to disposal shall have the dry weight determination made on the waste, prior to the addition of the solidification agent.

(c) If the dry weight ratio of a hazardous waste as measured under this section exceeds 10%, an operator of a hazardous waste injection well may elect to determine the composition of the waste stream that is inorganic salts or brines and separately record the weight of such inorganic salts for the purpose of assessment of the fee under §335.325(p) of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment). The methods used to determine the weight of inorganic salts in a hazardous waste stream are subject to review and approval by the executive director. This subsection does not apply to:

(1) any component of a waste stream that is a hazardous constituent or is a constituent for which the waste is designated as hazardous; or

(2) any waste stream received by a commercial facility for a charge.

(d) For purposes of a fee assessed under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment), the dry weight of a waste disposed in an underground injection well, to which brine, inorganic salts, or other authorized agents are added to maintain density control to assure compliance with no-migration requirements of 40 Code of Federal Regulations 148 Subpart C, shall be determined prior to the addition of the agent. No solid waste, as defined by the Health and Safety Code, §361.003(37), may be excluded from the determination of dry weight under this subsection.

Source: The provisions of this §335.326 adopted to be effective March 19, 1992, 17 TexReg 1737; amended to be effective August 24, 1992, 17 TexReg 5552; amended to be effective February 16, 1994, 19 TexReg 802; amended to be effective October 16, 1995, 20 TexReg 7993.

Cross References: This Section cited in 30 TAC §335.325, (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment); 30 TAC §335.327, (relating to Alternate Methods of Dry Weight Determination).

§ 335.327. Alternate Methods of Dry Weight Determination

(a) Generators may select other test methods for the purpose of calculating the dry weight of their waste where one of the methods provided in

§335.326 of this title (relating to Dry Weight Determination) is not applicable. Technical justification must be sent to the executive director, demonstrating that the proposed method will produce an accurate determination of the dry weight ratio of the waste unless the executive director has provided written approval for use of the alternate method. Use of an evaporation temperature above 75 degrees Celsius will be allowed only on demonstration that the waste stream contains appreciable volatile compounds that exhibit higher evaporation temperatures. Where practicable, results from the proposed test methods and the required method should be compared. Applicability of this item to such dry weight determinations is subject to review by the executive director.

(b) Generators may elect to declare the total wet weight of the waste as the dry weight.

Source: The provisions of this §335.327 adopted to be effective March 19, 1992, 17 TexReg 1737; amended to be effective February 16, 1994, 19 TexReg 802.

Cross References: This Section cited in 30 TAC §335.326, (relating to Dry Weight Determination).

§ 335.328. Fees Payment

(a) Generation and facility fees are payable each year for all Class I industrial solid waste and hazardous waste generators, permittees, and facilities. Fees must be paid by check, certified check, or money order payable to Texas Natural Resource Conservation Commission. Annual facility fees are payable by permittees, owners, or operators regardless of whether the facility is in actual operation. All annual generation and facility fees shall be due by a date to be established by the Texas Natural Resource Conservation Commission at the time payment is requested.

(b) Except as provided in subsection (c) of this section, waste management fees are to be paid monthly by each operator of a waste storage, processing, or disposal facility for wastes managed subject to the provisions of §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) in that month. Fees must be paid by check, certified check, or money order to Texas Natural Resource Conservation Commission and shall be due by the 25th day following the end of the month for which payment is due.

(c) An owner or operator required to pay a waste management fee who owes less than $500 for a calendar month or less than $1,500 for a calendar quarter is not required to file a monthly report under §335.329 of this title (relating to Records and Reports) but should file a quarterly report with and pay a quarterly fee to the commission.

Source: The provisions of this §335.328 adopted to be effective March 19, 1992, 17 TexReg 1737; amended to be effective February 16, 1994, 19 TexReg 802.

Cross References: This Section cited in 30 TAC §335.329, (relating to Records and Reports).

§ 335.329. Records and Reports

(a) Generators are required to:

(1) keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed on site or shipped off site for storage, processing, or disposal in accordance with the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators);

(2) keep records of the dry weight amount of each waste designated for disposal in an underground injection well and records of the amounts of any solidification agents, brine, or other authorized material added to a waste stream which may be excluded from the determination of dry weight under §361.326 of this title (relating to Dry Weight Determination);

(3) provide each operator of underground injection well a certificate of computation of the dry weight of a waste to be disposed. For each off-site shipment, the dry weight amount of each hazardous waste to be disposed in an underground injection well is to be recorded in Item J of the Uniform Hazardous Waste Manifest as required under §335.30 of this title (relating to Appendix I); and

(4) submit the appropriate reports required under §335.13(b) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste) on forms furnished or approved by the executive director.

(b) Owners or operators of waste storage, processing, or disposal facilities are required to:

(1) for on-site facilities, keep records of all hazardous waste and industrial solid waste activities regarding the quantities stored, processed, and disposed on site or shipped off site for storage, processing, or disposal in accordance with the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators);

~~(2) for off-site facilities, submit the appropriate~~ reports required under §335.15(2) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(3) record the dry-weight amount of each waste disposed in an underground injection well at the facility;

(4) document the basis for the assessment of any applicable fee as determined under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment), including any adjustment to or exemption from assessment; and

(5) except as provided in §335.328 of this title (relating to Fees Payment), submit a monthly summary of on-site waste management activities subject to the assessment of fees under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) on forms furnished or approved by the executive director. This summary report shall be due by the 25th day following the end of the month (or quarter) for which a report is made. An owner or operator required to comply with this subsection shall continue to prepare and submit monthly (or quarterly) summaries, regardless of whether any storage, processing, or disposal was made during a particular month (or quarter), by preparing and submitting a summary indicating that no waste was managed during that month (or quarter).

(c) Records or reports required to be kept under this section shall be retained for a minimum of three years after the date the record or report is made.

(d) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

Source: The provisions of this §335.329 adopted to be effective March 19, 1992, 17 TexReg 1737; amended to be effective August 24, 1992, 17 TexReg 5552; amended to be effective February 16, 1994, 19 TexReg 802.

Cross References: This Section cited in 30 TAC §335.328, (relating to Fees Payment).

§ 335.330. Cancellation, Revocation, and Transfer

(a) Cancellation or revocation of a permit, or termination of interim status, whether by voluntary action on the part of the applicant or permittee or ~~as a result of involuntary proceedings initiated by the commission, will not constitute grounds for~~ refund, in whole or in part, of any fee paid by the permittee or applicant.

(b) Transfer of facility ownership will not entitle the transferring permittee, applicant, or generator to a refund, in whole or in part of any fee already paid by the permittee, applicant, or generator. The transferring permittee, applicant, or generator remains liable for any unpaid portion of fee assessed which accrued during his ownership. Any permittee, applicant, or generator to whom facility ownership or a permit is transferred shall be liable for any of the fees assessed after date of transfer. Payment by either the transferring permittee, applicant, or generator, or by the permittee, applicant, or generator to whom the ownership was transferred shall constitute full payment for any fees assessed.

(c) A generator who ceases generation of industrial solid waste or hazardous waste due to a change of process or closing of operations shall not be eligible for a refund, in whole or in part, of any fee paid.

Source: The provisions of this §335.330 adopted to be effective March 19, 1992, 17 TexReg 1737.

§ 335.331. Failure To Make Payment or Report

(a) Failure to make payment in accordance with this subchapter constitutes a violation subject to enforcement pursuant to the Health and Safety Code, §361.137 and §361.252.

(b) Generators and owners or operators of a facility failing to make payment of the fees imposed under the Health and Safety Code, Chapter 361, when due, shall be assessed a penalty of 5.0% of the amount due, and if the fees are not paid within 30 days after the day on which the fees are due, an additional 5.0% penalty shall be imposed. An annual interest rate of 12%, compounded monthly, shall be imposed on delinquent fees beginning 60 days from the date on which the fee is due.

(c) Operators of waste management facilities submitting late reports concerning the management of waste under the Health and Safety Code, §361.136, are subject to a civil penalty of $100 for each day the violation continues.

(d) Any interest or penalties collected by the commission shall be deposited in the appropriate fund.

Source: The provisions of this §335.331 adopted to be effective March 19, 1992, 17 TexReg 1737; amended to be effective February 16, 1994, 19 TexReg 802.

Cross References: This Section cited in 30 TAC §335.321, (relating to Purpose); 30 TAC §335.324, (relating to Facility Fee Assessment).

§ 335.332. Appendices I and II

The following appendices will be used for the purposes of this subchapter. (Appendix I—Dry Weight Determination for Solids-Based Industrial Solid Waste and Hazardous Waste; Appendix II—Dry Weight Determination for Oil and Organic-Based Industrial Solid Waste and Hazardous Waste.)

APPENDIX I
DRY WEIGHT DETERMINATION FOR SOLIDS-BASED INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE

The dry weight determination provisions of §335.326 of this title (relating to Dry Weight Determination) specify that the generator must determine the dry weight of each hazardous waste stream. This appendix outlines the method to be used by the generator.

1. Collect a representative sample by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.

2. An aliquot of about 100 grams or more shall be weighed in a tared evaporating dish, casserole, or similar container. Record tare weight as "A" and container plus sample as "B."

3. This sample shall be evaporated at 73 degrees to 75 Celsius for two hours. Cool and weigh the sample plus container and record weight as "C."

4. Evaporate sample again in a drying oven at 103 degrees to 105 degrees Celsius per Standard Methods, 15th Edition, Method 209A. Cool and weigh sample plus container and record weight as "D."

All work should be done with all laboratory precautions necessary, including use of fume hoods and absence of ignition sources as appropriate.

Weight of Water = C − D

Weight of Water Free Waste = (B − A) − (C − D)
= Weight of original sample minus weight of water

Dry Weight Ratio = $\frac{(B-A)-(C-D)}{(B-A)}$
= Weight of water-free waste divided by Weight of original sample

APPENDIX II
DRY WEIGHT DETERMINATION FOR OIL AND ORGANIC-BASED INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE

The dry weight determination provisions of §335.326 of this title (relating to Dry Weight Determination) specify that the generator must determine the dry weight of each hazardous waste stream. This appendix outlines the method to be used by the generator.

1. Collect a representative sample by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.

2. An aliquot of about 25 grams or more shall be weighed to the nearest 0.1 mg in a tared evaporating dish or beaker. Record tare weight as "A" and container plus sample as "B."

3. Dilute sample with 100 ml of hexane. Filter sample through a crucible with a glass fiber filter (Whatman Grade 934AH and 984H; Gelman Type A/E; millipore type AP40; or equivalent. Available in diameters of 2.2 cm to 4.7 cm). Rinse evaporating dish or beaker with two 20 ml portions of hexane and filter through the crucible. Discard the solids and filter and save the filtrate.

4. Weigh approximately 25 grams of predried, anhydrous magnesium sulfate ($MgSO_4$) in a 400 ml beaker to the nearest 0.1 mg. Record the weight of the beaker and $MgSO_4$ as "C." Add the filtrate from Step 3 and stir for a few minutes with a glass rod. (Caution: Heat may be generated upon addition of filtrate.) Carefully decant the liquid portion in the beaker.

5. Dry the beaker at 73-75 degrees Celsius for one hour. Cool and weigh the beaker and record the weight as "D."

All work shall be done with all laboratory precautions necessary, including use of fume

~~hoods and absence of ignition sources as appro~~priate.

Weight of Water	=	D – C
Weight of Water Free Waste	=	(B – A) – (D – C)
	=	Weight of original sample minus weight of water
Dry Weight Ratio	=	$\frac{(B-A)-(D-C)}{(B-A)}$
	=	Weight of water-free waste divided by Weight of original sample

Source: The provisions of this §335.332 adopted to be effective March 19, 1992, 17 TexReg 1737; amended to be effective February 16, 1994, 19 TexReg 802.

Cross References: This Section cited in 30 TAC §335.326, (relating to Dry Weight Determination).

Subchapter K. HAZARDOUS SUBSTANCE FACILITIES ASSESSMENT AND REMEDIATION

Authority: The provisions of this Subchapter K issued under the Texas Water Code, §5.105; and the Texas Solid Waste Disposal Act, Health and Safety Code, §361.017 and §361.024.

Cross References: This Subchapter cited in 30 TAC §335.8, (relating to Closure and Remediation); 30 TAC §335.442, (relating to Definitions).

§ 335.341. Purpose and Scope

(a) The purpose of this subchapter is to establish an assessment and remediation program to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The provisions of this subchapter supplement and therefore should be read in conjunction with the provisions of the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, Subchapter F (Vernon Supplement), §§361.181 et seq., as amended, herein referred to as the Act.

(b) This subsection describes the Texas Water Commission (TWC) procedures for identifying, proposing, and listing facilities on the State Registry.

(1) Prior to proposing a facility for inclusion on the State Registry, the executive director shall first determine whether any potential endangerment to public health and safety or the environment at a facility can be resolved by the present owner or operator under the federal Resource Conservation and Recovery Act, 42 United States Code Annotated §§6901 et seq. (1976), as amended.

~~(2) If the potential endangerment cannot be~~ fully resolved by the present owner or operator, then the executive director shall determine whether the potential endangerment can be resolved by voluntary cooperation of some or all of the potentially responsible parties (PRPs) identified in the Act, §361.271, pursuant to an agreed administrative order issued by the commission. If it can be cleaned up pursuant to an agreed administrative order, then it shall not be proposed for listing.

(3) If, after reasonable efforts, the executive director determines that the potential endangerment to public health and safety or the environment cannot be resolved by either of these approaches, the executive director shall evaluate the facility to determine whether it is eligible for listing on the federal National Priorities List established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code Annotated §§9601 et seq. (1980), as amended.

(4) The executive director shall determine whether the facility is eligible for proposed listing on the State Registry only if, based on information available to the executive director, the facility is not eligible for inclusion on the federal National Priorities List.

(5) If the executive director determines that the potential endangerment to public health and safety or the environment can be resolved by any of the approaches described in paragraphs (1)-(3) of this subsection, then the site will not be proposed for listing on the State Registry. Notice of the approach selected to resolve the apparent endangerment to public health and safety or the environment and the fact that such action is being taken in lieu of listing the facility on the State Registry shall be published in the Texas Register.

Source: The provisions of this §335.341 adopted to be effective September 9, 1991, 16 TexReg 4624.

§ 335.342. Definitions

Definitions set forth in the Act that are not specifically included in this section shall also apply. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Agreed order or agreed administrative order—An administrative order issued by the commission and agreed to by one or more PRPs for the purpose of ~~settling potential liability for the remedial investi~~

gation/feasibility study and/or remediation of a facility proposed for listing, or listed on, the State Registry.

Divisible—That the hazardous substance(s) released or threatened to be released are capable of being managed separately under a remedial action plan.

Facility—

(A) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer, public owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft); or

(B) Any site or area where a hazardous substance has been posted, stored, disposed of, or placed or otherwise come to be located, but does not include any consumer product in consumer use or any vessel.

Federal hazard ranking system—The scoring system developed by the United States Environmental Protection Agency as set out in 40 Code of Federal Regulations Part 300, Appendix A, as amended.

Good faith offer—A written proposal by one or more PRPs which is not contingent on participation of other PRPs which, in the judgment of the executive director, will:

(A) in the case of a good faith offer to fund or perform a remedial investigation/feasibility study or other similar study, effectively determine the nature and extent of the release or threatened release of hazardous substances and its impact on air, soils, groundwater, and surface water, both within and beyond the boundaries of the facility; or

(B) in the case of a good faith offer to fund or perform a remedial action, effectively mitigate or minimize damage to, and provide adequate protection of, the public health and safety or the environment.

Hazardous waste disposal fee fund—The fund described in the Act, §361.133.

Imminent and substantial endangerment—A danger is imminent if, given the entire circumstances surrounding each case, exposure of persons or the environment to hazardous substances is more likely than not to occur in the absence of preventive action. A danger is substantial if, given the current state of scientific knowledge, the harm to public health and safety or the environment which would result from exposure could cause adverse environmental or health effects.

Nonparticipating PRPs—Potentially responsible parties who:

(A) are unwilling or unable to join in the making of a good faith offer;

(B) are unwilling or unable to become a party to an agreed order to perform an RI/FS, similar study, or remedial action; or

(C) intentionally violate the terms of an agreed order so as to substantially interfere with the achievement of the purposes of the agreed order.

Oversight costs—All administrative costs and costs for technical and legal services incurred by commission personnel, or agents or contractors for the commission, incurred in the oversight of the RI/FS and remedial action, plus all such costs incurred in verifying compliance by PRPs with the terms of any agreed order which may be issued.

Potentially responsible party (or PRP)—A person potentially responsible for solid waste as defined in the Act, §361.271.

Remedial investigation/feasibility study (or RI/FS)—

(A) An investigative study of the entire facility designed to determine the nature and extent of a release or threatened release of hazardous substances and, as appropriate, its impact on air, soils, groundwater, and surface water, both within and beyond the boundaries of the facility in accordance with the requirements of §335.348 of this title (relating to General Requirements for a Remedial Investigation/Feasibility Study); and

(B) A study which describes and evaluates a set of remedial action alternatives for effectively mitigating or minimizing damage to, and for providing adequate protection of, the public health and safety or the environment in accordance with the requirements of §335.348 of this title (relating to Remedial Investigation/Feasibility Study).

Remedial action plan—A detailed plan for the design, construction, and long-term operation and maintenance the remedial action agreed to by the commission.

Substantial change in use—A physical or functional alteration of a facility, the effect of which is to interfere significantly with a proposed or ongoing RI/FS or similar study or to expose the public

health and safety or the environment to a significantly increased threat of harm. The term includes, but is not limited to, actions such as the erection or razing of a building or other structure at the facility, the use of a facility for agricultural production, the paving over of a facility, the creation of a park or other public or private recreational use on the facility, and any other alteration of the site or activity which could interfere with the performance of an RI/FS or remedial action.

State superfund hazard ranking system—The scoring system used by the executive director for determining the relative priority for an RI/FS or remedial action needed at a facility.

Source: The provisions of this §335.342 adopted to be effective September 9, 1991, 16 TexReg 4624.

§ 335.343. Ranking of Facilities

(a) The relative priority for action needed at a facility investigated by the executive director for possible listing on the State Registry is based on a state superfund hazard ranking system (HRS). The state superfund HRS is a methodology designed to determine a numerical score for a facility based on the judgment of the executive director concerning various factors which may impact the public health and safety or the environment.

(b) Upon appropriate investigation by the executive director, a facility will be assigned a state superfund HRS score. A facility may be proposed for listing on the State Superfund Registry if it is assigned a state superfund HRS score 5.0 or greater.

(c) Facilities with the highest state superfund HRS score shall receive the highest priority for remedial action and state-funded cleanup, unless a situation described in the Act, §361.191, warrants more immediate action.

(d) The relative priority for action at facilities listed on the State Registry will be periodically reviewed and revised by the commission as necessary to accurately reflect the need for action at the facilities.

Source: The provisions of this §335.343 adopted to be effective September 9, 1991, 16 TexReg 4624.

§ 335.344. Delisting and Modifications

(a) Any potentially responsible party (PRP) of a facility listed or proposed for listing on the State Registry or any interested person may request the executive director to delete such facility from the registry, modify the facilities priority ranking within the registry, or modify any information regarding such facility by submitting a written statement setting forth the grounds of the request. The PRP or interested person shall submit to the executive director any information as may be reasonably required to enable the executive director to further evaluate the facility including, but not limited to, information on all factors used to develop a state superfund HRS score and to make a determination on the request.

(b) The commission shall hold a public contested case hearing within the meaning of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1990) on requests filed pursuant to subsection (a) of this section, provided that a written request for hearing is filed with the chief hearings examiner of the commission by any PRP of a facility listed or proposed for listing on the registry, or any interested person, within 30 days after receipt of a determination by the executive director made pursuant to a request filed in accordance with subsection (a) of this section. At least 30 days prior to the date set for hearing, notice shall be provided by first class mail to all other PRPs and other interested persons, and by publication in a newspaper of general circulation in the county where the facility is located. The person submitting the request shall bear the cost of publication of the notice.

(c) In making a determination under subsection (a) of this section, the executive director or the commission will consider the following:

(1) the extent to which the facility has been remediated pursuant to the terms of a remedial action plan agreed to by the executive director;

(2) what further action, if any, is appropriate;

(3) whether the release no longer poses an imminent and substantial endangerment to public health and safety or the environment and, therefore, taking further action is not appropriate; or

(4) whether, because of the nature of the remedial action implemented at the facility, it is not yet feasible to make a determination that the remedial action has effectively remediated the release or threat of release of hazardous substances.

(d) No requests for the delisting of a facility from the State Registry or requests to modify information about a facility eligible for listing on the registry will be granted unless, at a minimum, the facility has been investigated pursuant to the terms

of a remedial investigation/feasibility study or other similar study approved by the executive director.

Source: The provisions of this §335.344 adopted to be effective September 9, 1991, 16 TexReg 4624.

§ 335.345. Requests for Information or Production of Documents

(a) The executive director may submit requests for information and requests for production of documents as authorized by the Act, §361.182, to any person who has information or documents which in the executive director's opinion are necessary for the adequate investigation or remediation of a facility listed on the registry or proposed for listing on the registry. If the requested information or documents are not produced in a timely manner, the executive director may petition the commission to issue an order directing compliance with the requests for information or production of documents. The executive director shall serve a copy of the petition on the person to whom the request for information or production of documents was directed at least 20 days prior to the scheduled date of commission action on the petition. The person to whom the request for information or production of documents was directed may appear before the commission and present evidence and argument on the petition or in support of a claim asserted under subsection (b) of this section, or the commission may refer the matter to the office of hearings examiners for the taking of evidence.

(b) Information or documents provided to the executive director in accordance with this section are presumed to be public records except to the extent that a showing satisfactory to the commission is made that the information or documents would divulge trade secrets if made public. The commission shall deem the information or documents to be confidential and not subject to public disclosure if such a showing is made. Upon request, confidential information and documents supplied to the executive director will be returned to the person supplying the information or documents after it has served the purpose for which it was requested by the executive director.

Source: The provisions of this §335.345 adopted to be effective September 9, 1991, 16 TexReg 4624.

Cross References: This Section cited in 30 TAC §335.347, (relating to Financial Capability Determinations).

§ 335.346. Removal Actions and Preliminary Site Investigations

(a) For facilities listed on the registry or proposed for listing on the registry, no person may perform any partial or total removal activities at such facility or conduct on-site sampling, testing, or preliminary investigations of any type at such facility without the advance written authorization of the executive director after notice and opportunity for comment to all other potentially responsible parties.

(b) To expedite the executive director's consideration of a proposal to conduct removal activities or preliminary investigations at a facility, the person proposing such actions should submit to the executive director a work plan describing the precise nature of the removal or investigation activities proposed, a safety and health plan, and a quality assurance/quality control plan as well as a schedule for completing various subtasks identified in the work plan.

(c) Any authorization by the executive director to perform on-site testing, sampling, or preliminary investigations or partial or total removal activities at a facility does not constitute a finding or determination by the commission that such testing, sampling, or preliminary investigation constitutes an approved remedial investigation/feasibility study or that the removal activities constitute the final remedial action. An authorization by the executive director to perform any partial or total removal activities also does not constitute a determination or finding by the commission that any release or threatened release attributed to the removed materials is divisible as defined in the Act.

(d) Pursuant to the Act, §361.133(c), the executive director may use money in the hazardous and solid waste remediation fee fund for necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action. A necessary and appropriate aspect of any such removal or remedial action may be the construction of a fence as necessary to provide site security, and the taking and analysis of samples of potential hazardous substances, and potentially contaminated soils, surface water, and groundwater.

Source: The provisions of this §335.346 adopted to be effective September 9, 1991, 16 TexReg 4624.

Cross References: This Section cited in 30 TAC §335.348, (relating to General Requirements for a Remedial Investigation/Feasibility Study (RI/FS)).

§ 335.347. Financial Capability Determinations

(a) The executive director will make a determination of whether a potentially responsible party

~~(PRP) is financially capable of participating in a~~ facility investigation or remediation. Such a determination may be based on some or all of the following financial information:

(1) audited financial statements;

(2) federal or state income tax returns;

(3) a PRP's gross and net income for each of the preceding three years;

(4) a PRP's net worth for each of the preceding three years;

(5) a PRP's current cash flow position;

(6) a PRP's long-term liabilities;

(7) the liquidity of a PRP's assets; and

(8) any other data requested pursuant to §335.345 of this title (relating to Requests for Information or Production of Documents), which in the opinion of the executive director is relevant to a determination of the ability of the PRP to participate in a facility investigation or remediation.

(b) A determination by the executive director pursuant to this section shall be provided to all PRPs.

Source: The provisions of this §335.347 adopted to be effective September 9, 1991, 16 TexReg 4624.

§ 335.348. General Requirements for a Remedial Investigation/Feasibility Study (RI/FS)

(a) Unless otherwise directed by the commission, an RI/FS or other similar study as approved by the Texas Water Commission (TWC) shall be completed before the executive director's selection of the remedial action, except for emergency removal actions and preliminary site investigations pursuant to §335.346 of this title (relating to Removal Actions and Preliminary Site Investigations).

(b) A similar study may be approved by TWC as an appropriate alternative to the performance of a full RI/FS when necessary to avoid delay, to make more effective use of resources, or when such similar study is sufficient to adequately characterize a site.

(c) The contents of the RI/FS, as approved by the commission, will depend on the particular circumstances of each specific facility. Under any RI/FS, however, sufficient information must be collected and evaluated to allow the commission to select an appropriate remedial action.

(d) An RI/FS may include the following, as appropriate to a particular facility, for the purpose of ~~allowing TWC to select an appropriate remedial~~ action:

(1) investigations of surface water and sediments necessary to characterize hydrologic features such as surface drainage patterns, areas of erosion and sediment deposition, surface waters, floodplains, and actual or potential hazardous substance migration routes within these areas. Properties of surface and subsurface sediments which would influence the type and rate of hazardous substance migration or affect the ability to implement alternative remedial actions shall be characterized;

(2) investigations to adequately characterize the vertical and areal distribution and concentrations of hazardous substances in the soils encompassing the facility. Properties associated with the soils which would influence the type and rate of hazardous substance migration or affect the ability to implement alternative remedial actions shall be characterized;

(3) investigations of hydrogeology and geology to adequately characterize the horizontal and vertical distribution and concentrations of hazardous substances in the groundwater and the features which affect the fate and transport of those hazardous substances. This should include, but is not limited to, the physical properties and distribution of bedrock and unconsolidated materials, groundwater flow rate and gradient for contaminated and potentially contaminated aquifers, groundwater divides, areas of groundwater recharge and discharge, and location of public and private groundwater wells;

(4) information regarding local climatological characteristics which are likely to affect the hazardous substance migration such as: rainfall patterns; frequency of storm events; temperature variations; prevailing wind direction; and wind velocity;

(5) information to determine the impact or potential impact on the natural resources and ecology of the area such as sensitive environments, plant and animal species, and other environmental receptors;

(6) descriptions of the location, quantity, horizontal and vertical extent, concentrations, and sources of hazardous substances in disposal areas. Information on the physical and chemical characteristics and the toxicological effects of hazardous substances shall be provided, if available.

~~(e) In order to identify possible health problems~~ associated with the "no action" remedial action alternative, a baseline public health evaluation will be conducted in accordance with the Environmental Protection Agency's Risk Assessment Guidance for Superfund—Volume 1: Human Health Evaluation Manual or other equivalent Environmental Protection Agency (EPA) guidance document. The evaluation may not be required when the executive director determines that remediation standards are apparent and undisputed and adequately protective of human health and the environment.

(f) The number and types of remedial action alternatives to be evaluated shall take into consideration the particular characteristics and complexities of the facility. Development of remedial action alternatives shall include, at a minimum, the following:

(1) an alternative which involves the treatment of hazardous substances to health-based levels or the level of best demonstrated available technology;

(2) an alternative consisting of containment of all hazardous substances either on-site or off-site;

(3) an alternative consisting of a combination of on-site and off-site containment;

(4) no remedial action.

(g) At a minimum, the following criteria will be used to evaluate each remedial action alternative:

(1) the extent to which the alternative mitigates long-term exposure of any residual contamination;

(2) the extent to which the alternative achieves remediation standards and complies with applicable federal, state, and local regulations;

(3) the extent to which the alternative permanently and significantly reduces the volume, toxicity, and mobility of hazardous substances;

(4) the present value cost including the total costs of implementation and annual operation and maintenance costs;

(5) the extent to which local community concerns are addressed and whether implementation of the alternative would result in other adverse effects on the local community;

(6) other significant impacts on human health and the environment resulting from implementation of the remedial action alternative; and

(7) the technical merits of each remedial alternative ~~relative to the other.~~

~~(h) A work plan for an RI/FS shall be submitted~~ to the executive director for final review and possible modifications and shall include the following:

(1) a sampling and analysis plan covering all sampling activities to be undertaken pursuant to the RI/FS;

(2) a quality assurance/quality control plan to assure the integrity of all samples taken pursuant to the RI/FS;

(3) a health and safety plan to describe steps to be taken to assure the health and safety of all personnel engaged in implementing the RI/FS; and

(4) a schedule of implementation for all aspects of the RI/FS.

(i) Treatability studies may be required as necessary to provide information to evaluate remedial action alternatives.

(j) A report shall be prepared at the completion of the RI/FS and submitted to the executive director for review, possible modification, and final approval.

(k) In evaluating the acceptability of an RI/FS or similar study, the executive director may utilize published TWC and EPA technical guidance documents including, but not limited to, the documents set forth in Appendix II.

Source: The provisions of this §335.348 adopted to be effective September 9, 1991, 16 TexReg 4624.

Cross References: This Section cited in 30 TAC §335.342, (relating to Definitions).

§ 335.349. General Requirements for a Remedial Action

(a) Based on the proposals set forth in the feasibility study, the executive director shall select a remedial action. The selection of the remedial action shall be based on relevant information collected during the remedial investigation/feasibility study (RI/FS), or other approved study, as well as any other information available to the commission. The commission may select a final remedial action which incorporates elements from different remedial action alternatives as proposed in an RI/FS.

(b) Engineering documents submitted in connection with the remedial action will be required to demonstrate compliance with relevant cleanup standards, except as provided in the Act, §361.193. The scope of these documents will depend on the nature and complexity of the proposed remedial ~~action and may vary from site to site.~~

(c) A remedial action plan shall consider the following factors if relevant to a particular facility, but shall not be limited to those factors, as follows:

(1) a design engineering report to include information for the development and review of construction plans and specifications;

(2) construction plans and specifications describing in detail the cleanup actions to be performed and prepared in conformance with currently acceptable engineering techniques and practices; and

(3) an operation and maintenance plan to assure effective and environmentally safe operations under normal and emergency situations.

Source: The provisions of this §335.349 adopted to be effective September 9, 1991, 16 TexReg 4624.

§ 335.350. Defense to Liability and Claims of Divisibility

(a) The burden of establishing that a potentially responsible party (PRP) qualifies for any defenses to liability set forth in the Act, §361.275, or that a release is divisible as set forth in the Act, §361.276, lies with the PRP asserting such claim.

(b) A PRP must demonstrate to the executive director its entitlement to a defense or claim under the Act, §361.275 or §361.276. The determination by the executive director of a PRP's request for limitation of liability under these sections of the Act is a discretionary act which does not entitle the PRP to an appeal to the commission or an adjudicatory hearing on such determination.

(c) The executive director will not consider claims of divisibility until a site has been adequately characterized by an RI/FS or other approved study.

(d) A determination by the executive director on a defense or claim asserted under the Act, §361.275 or §361.276 shall have no res judicata or collateral estoppel effect on a PRP's ultimate liability for remediation of a facility as determined in subsequent commission proceedings or in district court.

Source: The provisions of this §335.350 adopted to be effective September 9, 1991, 16 TexReg 4624.

§ 335.351. Settlement Agreements

(a) General purpose. The Texas Water Commission (TWC) encourages potentially responsible parties (PRPs) to enter into negotiated settlement agreements with the commission so that an effective cleanup of a state superfund facility can be quickly implemented while at the same time resolving PRP's apparent liability for the facility. The goal of the executive director in negotiating PRP settlements is to obtain a complete investigation and cleanup of the facility by PRPs, or to collect from PRPs 100% of the commission's cost of performing a complete investigation and cleanup of the facility.

(b) Partial settlements. The commission may consider a settlement proposal for cleanup of less than 100% of a facility's cleanup activities or cleanup costs. Upon settling with cooperative parties, the commission will vigorously seek all remaining relief, including full cost recovery of monies expended from the hazardous waste disposal fee fund, including penalties, damages, and interest where appropriate, as well as TWC oversight costs, from parties whose noncooperation prevented the achievement of a complete settlement.

(c) Mixed funding. Mixed funding means use of funds from federal, state, and private party sources, or any combination of those sources, to fund a timely response action. Mixed funding may be used in the following circumstances.

(1) In order to achieve an expeditious cleanup of a facility listed on the registry, the commission may agree to reimburse parties to a settlement agreement from the hazardous waste disposal fee fund, with interest, for certain costs incurred as a result of the timely implementation of the remedial action plan that the parties agree to perform but which the commission agrees to finance. The commission may agree to utilize funds from whatever other federal or state source are available to the commission for the funding of a facility remediation.

(2) Mixed funding shall be provided only to PRPs whom the commission has found to be eligible and who have entered into an agreed administrative order with TWC. The agreed administrative order shall identify remedial action tasks to be addressed by the mixed funding, costs to be borne by the hazardous waste disposal fee fund, and the terms of agreement.

(3) A PRP must submit sufficient documentation, as requested by the executive director, to support its request for mixed funding.

(4) The commission's granting of a request for mixed funding does not diminish or alter the standard and scope of liability as set out in the Act. The commission will not approve mixed funding based solely on the grounds that a share of wastes at a site may be attributable to an unknown or financially nonviable party. In addi-

~~tion, the availability or the amount of any fund~~ financing for a particular site will not be dependent on consistency with any volumetric allocation.

(5) Good faith negotiations and early cooperation of settlers will be considered in mixed funding requests. Mixed funding for remedial actions would not be appropriate where the executive director did not receive a good faith offer for the participation of the PRPs in the completion of the remedial investigations/feasibility study.

(6) If a PRP is found to be eligible for mixed funding, the executive director shall make an initial determination regarding the amount of funding to be prov d. This determination is solely within the di tion of the executive director and is not su ct to adjudication in an administrative hearing or appeal to the commission. A determination of eligibility is not a funding commitment as actual funding will depend on availability of funds and approval of the commission.

(7) Where a remedial action has been completed at a facility pursuant to a mixed funding agreement, the hazardous waste disposal fee fund (the fund) shall be subject to an obligation for subsequent remedial actions at the same facility only to the extent that such subsequent actions are necessary by reason of failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures, or through payment by parties who were not signatories to the original agreement.

(d) De minimis settlements. The commission may reach a final settlement with a PRP for only a minor portion of the response costs at a facility if the conditions in either of the following paragraphs (1) or (2) of this subsection are met.

(1) A PRP can demonstrate the following:

(A) the amount of the hazardous substances contributed by a particular PRP is minimal in comparison to the amounts of other hazardous substances at the facility; or

(B) the toxicity or other hazardous effects of the hazardous substances contributed by a particular PRP are minimal in comparison to the toxicity or other hazardous effects of other ~~hazardous substances at the facility.~~

~~(2) The PRP can demonstrate that it:~~

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

(3) Paragraph (2) of this subsection does not apply if the PRP purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(e) Covenants not to sue.

(1) The commission may, in its discretion, provide any PRP with a covenant not to sue concerning any existing or future liability resulting from a release or threatened release of a hazardous substance addressed by a remedial action if each of the following conditions is met:

(A) the covenant not to sue is in the public interest as determined by criteria set forth in paragraph (2) of this subsection;

(B) the granting of the covenant not to sue would expedite a remedial action approved by the commission; and

(C) the PRP is in full compliance with the terms of any order issued by the commission for response to the release or threatened release concerned.

(2) In assessing the appropriateness of granting a covenant not to sue and in determining the appropriate legal scope of such a covenant, the commission shall consider whether the covenant is in the public interest on the basis of such factors as the following:

(A) the effectiveness and reliability of the remedial action, in light of other alternative remedies considered for the facility concerned;

(B) the nature of the environmental risks remaining at the facility;

(C) the extent to which performance standards are included in the order or decree;

(D) the extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature ~~of the substances at the facility;~~

(E) the extent to which the technology used in the response action is demonstrated to be effective;

(F) whether the hazardous waste disposal fee fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility; and

(G) whether the remedial action will be carried out, in whole or in significant part, by the PRPs themselves.

(3) A covenant not to sue shall be subject to the satisfactory performance by the PRP of its obligations under any order issued by the commission for response of remedial actions to address the release or threatened release of a hazardous substance at the facility. A covenant not to sue concerning future liability for remediation of the facility shall not take effect until the executive director certifies that the remedial action has been completed in accordance with any such order issued by the commission.

(4) A covenant not to sue a PRP concerning future liability for remediation of a facility may include an exception to the covenant that allows the commission to sue such person where such liability arises out of conditions which are unknown to the executive director at the time he certifies under paragraph (3) of this subsection that the remedial action has been completed at the facility. A covenant not to sue may provide that such future liability may be limited to the same proportion as that established in the original settlement agreement or order issued by the commission.

(f) Any settlement agreement with the commission which resolves a PRP's liability for remediation of a facility does not discharge the liability of any other PRP unless its terms so provide, but it reduces the potential liability of the other PRPs by the amount of the settlement. A PRP will be afforded the opportunity to comment on any settlement agreement with the commission to which it is not a party.

Source: The provisions of this §335.351 adopted to be effective September 9, 1991, 16 TexReg 4624.

§ 335.352. Adoption of Appendices by Reference

The following appendices are adopted by reference. Copies of these appendices may be obtained by contacting the Texas Natural Resource Conservation Commission, Library, P.O. Box 13087, 12118 North IH-35, Austin, Texas 78711-3087, (512) 239-0020.

(1) Appendix I: 40 Code of Federal Regulations (CFR) Part 300, Hazard Ranking System; Final Rule, effective March 14, 1991.

(2) Appendix II: List of basic TNRCC and EPA Technical Guidance Documents, dated December 1, 1994.

Source: The provisions of this §335.352 adopted to be effective September 9, 1991, 16 TexReg 4624; amended to be effective December 1, 1995, 20 TexReg 8643.

Subchapter L. CONTROL OF AIR POLLUTION FROM HAZARDOUS WASTE OR SOLID WASTE MANAGEMENT FACILITIES

Authority: The provisions of this Subchapter L issued under Texas Civil Statutes, Article 4477-5, §4(e)(4)(A)(i).

§ 335.361. Definitions

The words and terms used in this subchapter have the meanings as given in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the regulations promulgated thereunder. Unless specifically defined in the Solid Waste Disposal Act or the regulations promulgated thereunder, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. The term "facility" as used in this chapter refers to a hazardous or solid waste management facility as defined in the Solid Waste Disposal Act. The use of the term "modified" in this subchapter is consistent with the term "modification" as defined in the Texas Clear Air Act.

Source: The provisions of this §335.361 adopted to be effective May 1, 1986, 11 TexReg 1832.

§ 335.362. Applicability

(a) This subchapter applies to all hazardous waste or solid waste management facilities which are required to obtain a permit by the Texas Water Commission pursuant to the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)(A)(i), except as provided in subsections (c)-(e) of this section. For purposes of this subchapter, the phrase "a facility in existence on or before September 1, 1987" refers to a hazardous waste management facility or hazardous waste land disposal facility that is used for the storage, processing, or disposal of hazardous waste and that is authorized by a hazardous waste permit or is physically present and awaiting final action on an application submitted pursuant to §§335.2(c), 335.43(b),

and 335.45(b) of this title (relating to Permit Required; Permit Required; and Effect on Existing Facilities), including any revisions made in accordance with §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits).

(b) Hazardous or solid waste management facility units which other wise would not be subject to Texas Water Commission permitting requirements, but would be subject to the permitting requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and are located at waste management facilities which manage waste from off-site sources and are permitted by the commission after September 1, 1987, shall be regulated by the air quality permitting requirements of this subchapter.

(c) Any person who plans to construct or engage in the modification of a hazardous waste or solid waste management facility shall obtain authorization for such construction or modification under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if the proposed construction or modification is subject to the new source review requirements of the Federal Clean Air Act, Title I, Part C or D, 42 United States Code §7401 et seq.

(d) The air quality permitting requirements of this subchapter do not apply to facilities in existence on or before September 1, 1987, except for facility units which incinerate or burn hazardous or solid waste.

(e) The air quality permitting requirements of this subchapter do not apply to the expansion of hazardous waste land disposal facilities in existence on or before September 1, 1987.

Source: The provisions of this §335.362 adopted to be effective May 1, 1986, 11 TexReg 1832; amended to be effective June 21, 1988, 12 TexReg 2838.

Cross References: This Section cited in 30 TAC §335.366, (relating to General Air Emissions Requirements for Hazardous or Solid Waste Management Facilities); 30 TAC §335.367, (relating to Specific Air Emissions Requirements for Hazardous or Solid Waste Management Facilities).

§ 335.363. Permit Conditions

Permits for facilities to which this subchapter applies may contain terms and conditions relating to air quality. The holders of such permits shall comply with any and all such terms and conditions.

Source: The provisions of this §335.363 adopted to be effective May 1, 1986, 11 TexReg 1832.

§ 335.364. Representations in Application for Permit

All representations in an application for a Texas Water Commission permit or a modification to a commission permit regarding construction plans and operation procedures that may affect emissions from a facility to which this subchapter applies, become conditions upon which a subsequent permit is issued. It shall be unlawful for any person to vary from such representations if the change may alter the method or efficiency of controlling the emissions, the character of the emissions, or may result in an increase in the emissions of any air contaminant, unless prior notification is made to the commission and the Texas Air Control Board and such change is approved by the permitting agency. Any such change may be approved by the permitting agency only after the Texas Air Control Board has reviewed the proposed change and has made its recommendations on the proposed change to the permitting agency. Such person shall submit to the executive director of the commission upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter and whether such change may be approved. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

Source: The provisions of this §335.364 adopted to be effective May 1, 1986, 11 TexReg 1832; amended to be effective June 21, 1988, 13 TexReg 2838.

§ 335.365. Responsibility for Review of Air Quality Impacts from Existing, New, and Modified Facilities

(a) Technical review. The Texas Air Control Board shall be responsible for performing a technical review of the air quality aspects of any permit application submitted to the Texas Water Commission for a solid waste or hazardous waste management facility to which this chapter applies. The board shall complete such review and shall forward all recommendations or proposed permit provisions to the commission within the time limits established under Chapter 281 of this title (relating to Applications Processing) for completion of technical review of the application. All recommendations developed by the board and forwarded to the commission shall be included in any permit issued, unless the commission determines that the recommendation or proposed revisions are less stringent than applicable federal requirements under the Federal Solid Waste Disposal Act as amended by

the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended. If permit provisions proposed by the board conflict with provisions proposed by the commission, the two agencies shall attempt to resolve such conflicts prior to completing technical review of the application.

(b) Uncontested cases. If a contested case hearing is not held by the commission, the proposed provisions submitted by the board shall be incorporated into any permit issued by the commission.

(c) Hearings. If a contested case hearing is held by the commission, all evidence and testimony of the state regarding air quality aspects of the application shall be developed and presented by the board. All parties, including the commission, shall have the right to cross-examine any testifying witnesses of the board. At the conclusion of the presentation of testimony, the commission shall afford the board at least 30 days in which to submit proposed findings of fact and conclusions of law, and, if applicable, proposed permit language, regarding the air quality aspects of the application. Such findings, conclusions, and permit language shall be accepted unless the commission finds that the recommendations of the board are not supported by a preponderance of the evidence. The board may seek judicial review of the air quality aspects of any final decision of the commission.

(d) Enforcement. Both the board and the commission shall have authority to enforce the terms of any permit issued by the commission which relate to air quality.

Source: The provisions of this §335.365 adopted to be effective May 1, 1986, 11 TexReg 1832.

§ 335.366. General Air Emissions Requirements for Hazardous or Solid Waste Management Facilities

(a) In order for a Texas Water Commission permit to be granted to a hazardous or solid waste management facility, including any units as provided in §335.362(b) of this title (relating to Applicability), the owner or operator of such facility or unit shall submit information to the permitting agency which will demonstrate that all of the following are met:

(1) The facility or unit will comply with all requirements of the Resource Conservation and Recovery Act and the rules promulgated thereunder insofar as these directly or indirectly relate to air contaminant emissions.

(2) The facility or unit will comply with all regulations of the Texas Air Control Board, except Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), and with the intent of the Texas Clean Air Act.

(3) The facility or unit will comply with all applicable requirements relating to air quality in Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, and Disposal Facilities), promulgated by the commission pursuant to the Solid Waste Disposal Act.

(4) The facility or unit will meet at least the requirements of any applicable new source performance standards promulgated by the U.S. Environmental Protection Agency pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended.

(5) The facility or unit will meet at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by the U. S. Environmental Protection Agency pursuant to authority granted under the Federal Clean Air Act, §112, as amended.

(6) The facility or unit will have appropriate provisions for determining significant emissions of air contaminants.

(b) The owner or operator of the facility or unit shall also comply with each of the following after operation has commenced:

(1) As soon as possible after a spill or leak of hazardous or odorous waste, all standing liquids resulting from the spill or leak shall be collected, contained, treated, or disposed of in a manner that minimizes adverse environmental impacts.

(2) Records shall be maintained on-site indicating the date, quantity, type, and composition of solid waste generated or managed at the hazardous or solid waste management facility. At a minimum, the definition of waste composition shall be provided in sufficient detail to identify the significant potential air contaminants. An analysis for those chemical compounds present in concentrations greater than 1.0% by volume of the total waste stream which includes the concentration of the total organic carbon, shall be sufficient.

(3) All records required by the permit to assure compliance with this subchapter shall be maintained at the plant site and shall be made available to representatives of the board or com-

mission upon request. Such records shall be maintained on-site for at least three years.

(4) All sampling, monitoring, testing, and calibration equipment and procedures related to air emissions shall be conducted in accordance with the quality assurance requirements of the board and shall have prior board approval.

(5) The holder of a permit shall conduct sufficient stack sampling analyses, emissions monitoring, or other tests related to air emissions, to prove satisfactory equipment performance upon request by the executive director of the board. All sampling and testing procedures shall have prior board approval.

(6) Hazardous or solid waste management facilities or units shall not be operated unless all associated air pollution abatement equipment is maintained in good working order and functioning properly during operations.

Source: The provisions of this §335.366 adopted to be effective May 1, 1986, 11 TexReg 1832; amended to be effective June 21, 1988, 13 TexReg 2838.

§ 335.367. Specific Air Emissions Requirements for Hazardous or Solid Waste Management Facilities

(a) Hazardous or solid waste management facilities, including any units as provided in §335.362(b) of this title (relating to Applicability), shall meet the following requirements.

(1) The facility or unit will utilize the best available control technology to control the emissions of air contaminants, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating these emissions from the facility or unit.

(2) The owner or operator must demonstrate that the facility or unit will not cause or contribute to a condition of air pollution as defined in the Texas Clean Air Act (TCAA). Such demonstration shall be based on waste characteristics, emissions estimates, and dispersion modeling, and shall be submitted as part of the permit application.

(b) All facility units which incinerate or burn solid or hazardous waste, including those units which were in existence on or before September 1, 1987, shall meet the following requirements.

(1) The facility unit must comply with all sections of the Texas Air Control Board, except Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(2) The owner or operator must submit a list of wastes stored, handled, processed, or disposed of at the facility unit including estimates of the quantity and character of such waste. The applicant shall certify that such information is true, correct, and complete to the best of his or her knowledge.

(3) If the board determines, based on a review of the information submitted pursuant to paragraph (2) of this subsection, that a significant potential for a condition of air pollution due to emissions from the facility unit exists and the monitoring of emissions from such facility unit is feasible:

(A) within 90 days from the date of issuance of the Texas Water Commission permit, the owner or operator of the facility unit must submit to the board a plan for monitoring emissions from the facility unit and must initiate monitoring within 90 days of board approval of such plan; or

(B) in support of the application, the owner or operator must submit, to the commission and the board, dispersion modeling demonstrating that the facility unit will not cause a condition of air pollution.

(4) If one or more complaints relating to air pollution resulting from operation of the facility unit have been received and a condition of air pollution has been confirmed by the state or local air pollution control agency within the 36 months prior to the date of notification associated with the declaration of administrative completeness pursuant to §281.17(a) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness), the owner or operator of the facility unit must submit monitoring data or dispersion modeling demonstrating that the facility unit will not cause a condition of air pollution. Failure to submit such information may be grounds for permit denial.

Source: The provisions of this §335.367 adopted to be effective May 1, 1986, 11 TexReg 1832; amended to be effective June 21, 1988, 13 TexReg 2838.

~~Subchapter M. PRE-APPLICATION~~ REVIEW AND PERMIT PROCEDURES

§ 335.391. ~~Pre-application~~ Review

(a) ~~Purpose. The commission recommends a pre-application review process in situations where op-~~

~~position to an application is likely to exist. A pre~~ application review should serve to identify issues of concern; facilitate communication between a potential applicant and persons who would be affected by an application; and resolve as many points of conflict as possible prior to the submission of an application. A local review committee shall:

(1) interact with the applicant in a structured manner during the pre-application review stage of the permitting process and, if necessary, during the technical review stage of the permitting process, to raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions. The applicant shall submit this report to the commission with the applicant's permit application.

(b) Applicability. This subchapter applies to potential permit applicants who desire to enter into agreements with affected persons and/or identify issues of local concern prior to submission of an application for a new hazardous waste management facility (including injection wells used for the disposal of hazardous waste). This subchapter shall not apply to hazardous waste management facilities for which an application has been filed, or which has otherwise been authorized to operate, as of September 1, 1985.

(c) Procedure.

(1) If a potential applicant decides to participate in a local review committee process, the potential applicant may so inform the persons listed in subparagraphs (A)-(C) of this paragraph, as soon as feasible after beginning informal discussions with the commission. To formally initiate the pre-application review process, the potential applicant shall file a notice of intent to file an application with the commission. Further, at the same time the potential applicant shall cause the notice to be published in a paper of general circulation in the county in which the facility is to be located. The form of this notice is specified in §335.392 of this title (relating to Notice of Intent To File a Permit Application). The potential applicant will, at the same time, send a copy of the notice by certified mail, return receipt requested, to the following persons:

(A) the appropriate mayor and county judge ~~if the proposed facility is to be located within the corporate limits or extraterritorial jurisdic~~tion of a city; or

(B) the appropriate county judge if the proposed facility is to be located within an unincorporated area of a county; and

(C) the appropriate regional council of government.

(2) The filing of the notice initiates the pre-application review process. The date of filing shall be the date the notice is received by the commission.

(3) Local review committees shall be composed of representatives of both local and regional interests.

(A) Size. A local review committee shall consist optimally of 12 individuals. However, by mutual agreement between the applicant and the persons appointing the committee, a larger committee to better represent all interest groups present in a community or a smaller committee for economic reasons may be appointed. However, the committee shall maintain a one to one ratio of regional appointments to local appointments.

(B) Appointments.

(i) If a proposed facility is to be located within the corporate limits or the extraterritorial jurisdiction of a city or town, the potential applicant shall ask the mayor of the city or town to make all local appointments.

(ii) If a proposed facility is to be located in an unincorporated area of a county, but within five miles of the corporate limits or extraterritorial limits of any city, the potential applicant shall ask the mayor of each affected city to appoint one member. The appropriate county judge shall appoint at least one member, if available, who lives within five miles of the proposed site. The county judge shall also appoint any remaining individuals necessary to complete local appointments to the committee.

(iii) If a proposed facility would not be within five miles of the corporate limits or the extraterritorial jurisdiction of a city, the potential applicant shall ask appropriate county judge to appoint at least one member, if available, who lives within five miles of the proposed site and as many other individuals from the county as are necessary to complete ~~the local appointments.~~

(iv) Regional appointments shall be made by the appropriate regional council of government (COG) or another regional entity such as a special district or river authority designated by the COG. An attempt shall be made to make regional appointments from as many of the interest groups outlined in subclauses (I)-(VII) of this clause, as possible:

(I) organized environmental or public interest groups;

(II) citizen organizations active in environmental issues;

(III) industry, preferably, but not necessarily, individuals with expertise in waste management;

(IV) academic community, preferably, but not necessarily, individuals trained in a technical discipline related to waste management and/or public involvement;

(V) community or land use planning groups;

(VI) business groups, preferably, but not necessarily individuals with experience related to the generation of waste; and

(VII) public health professionals.

(v) If any local official or regional entity has failed to make any appointments within 45 days after the notice of intent to file has been received by the commission, the committee will be abolished without harm to the applicant's ability to pursue the application.

(vi) Every effort should be made to appoint individuals who are open-minded, willing to participate in good faith, able to devote adequate time to participation, and respected in the community or region. The committee shall reflect the diversity of the community, including but not limited to the following factors: gender, age, race, economic status, and educational level.

(vii) Appointees shall not be employees or agents of the potential applicant.

(viii) An individual shall not serve on more than one local review committee at any one time.

(ix) The committee shall elect a chairperson who will preside over meetings.

(x) The committee shall be required to select and engage the services of a professional facilitator for the purpose of coordinating the activities of the committee and preparing the report.

(4) The local review committee shall meet within 21 days after all regional and local appointments have been made. The commission will provide manuals to committee members which will orient them as to what the committee's activities should be; i.e., the production of a report detailing issues resolved, issues unresolved, and unanswered questions.

(5) The pre-application review process shall continue for a maximum of 180 days unless it is shortened or lengthened by mutual agreement between the potential applicant and the local review committee. In addition, by mutual agreement the applicant and the committee may continue a dialogue for the purpose of addressing new concerns and changes to the draft permit.

(6) Individuals who serve on local review committees shall serve without compensation; however, reasonable expenses for travel may be provided by the applicant. The potential applicant shall provide resources to fund the facilitator and other expenses which may include clerical and technical assistance, meeting space, and/or other items which may be necessary to aid the committee in its work.

(d) The committee report.

(1) Any report produced by a local review committee set up under this section shall be submitted to the commission with an applicant's permit application. The executive director shall consider the report in any decision to recommend granting or denial of the permit application. The report may be offered by any party at a hearing on the application and admitted into evidence subject to applicable rules of evidence.

(2) The report shall not recommend approval or disapproval of the proposed facility. Rather, it shall describe the committee's work and summarize the committee's findings. The findings shall include issues resolved, issues unresolved, and unanswered questions.

Source: The provisions of this §335.391 adopted to be effective August 26, 1986, 11 TexReg 3595; amended to be effective January 5, 1988, 12 TexReg 4847; amended to be effective January 2, 1995, 19 TexReg 10104.

Cross References: This Section cited in 30 TAC §335.201, (relating to Purpose, Scope, and Applicability); 30 TAC §335.393, (relating to Award of Costs).

§ 335.392. Notice of Intent To File a Permit Application

The following appendix will be used for purposes of this subchapter.

Appendix I

Notice of Intent to File a Permit Application

This form shall be submitted only in the event a potential applicant intends to initiate a pre-application review process as described in 31 TAC § 335.391. Local officials designated to appoint a local review committee pursuant to 31 TAC § 335.391 must do so within 15 days after the filing of this notice with the Texas Water Commission. For further information, contact the Texas Water Commission, Hazardous and Solid Waste Division, P.O. Box 13087, Capitol Station, Austin, Texas 78711.

(Potential Applicant Complete:)
Name: _____
City, County, Individual or Company
Individual Contact: _____
Mailing Address: _____
Type of Facility Proposed:

_____Incinerator	_____Landfill
_____Transfer facility	_____Land treatment
_____Storage facility	_____Surface impoundment
_____Processing facility	_____Waste pile
_____Recycling facility	_____Injection well

_____Other

Street Address or Location of Proposed Facility:
_____
_____
Site Located in:
County of _____ Corporate Limits or extraterritorial jurisdiction of _____
Within five miles of corporate limits or extraterritorial jurisdiction of city(s) of _____
(For Commission Use Only:)
Date Received:

Source: The provisions of this §335.392 adopted to be effective August 26, 1986, 11 TexReg 3595; amended to be effective January 2, 1995, 19 TexReg 10104.

Cross References: This Section cited in 30 TAC §335.391, (relating to Pre-application Review); 30 TAC §335.393, (relating to Award of Costs).

§ 335.393. Award of Costs

(a) Any person other than the applicant who has participated in the local review committee process pursuant to this chapter, may be awarded, by the commission, its reasonable costs or any part thereof for technical studies and reports and expert witnesses associated with the presentation of evidence at a public hearing on the permit application subsequent to the local review committee process. Such evidence must relate to issues raised by such person in the local review committee process but which are still unresolved at the time of the commencement of the hearing on the permit applications for a hazardous waste management facility. To be eligible for an award, such person shall file a motion for recovery of costs at the end of the evidentiary portion of the public hearing.

(b) In determining the appropriateness of such an award, the commission shall consider the following:

(1) whether the evidence or analysis provided through such studies, reports, and witnesses is significant to the evaluation of the application;

(2) whether the evidence or analysis would otherwise not have been provided in the proceeding; and

(3) whether the local review committee was established in accordance with §335.391 and §335.392 of this title (relating to Pre-Application Review; and Notice of Intent to File a Permit Application).

(c) The person seeking such an award shall have the burden of proof to demonstrate that the costs are reasonable and consistent with similar services performed in the area. The applicant shall have the opportunity to rebut such evidence. Costs awarded by the commission shall be taxed against the applicant. The total award granted to all such persons by the commission with respect to any particular application shall not exceed $25,000. Judicial review of any award by the commission shall be pursuant to the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

(d) Except as provided in subsection (e) of this section, when an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs, shall waive any requirement that the person seeking an award of costs has participated in a local review committee process.

(e) If an applicant, after reasonable efforts to determine whether any local opposition exists to its proposed facility including, but not limited to, discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or because a local review committee is not established despite the good faith efforts of the applicant, then such applicant shall not be subject to an award of costs pursuant to subsection (a) of this section.

Source: The provisions of this §335.393 adopted to be effective August 26, 1986, 11 TexReg 3595.

Subchapter N. HOUSEHOLD MATERIALS WHICH COULD BE CLASSIFIED AS HAZARDOUS WASTE

Cross References: This Subchapter cited in 30 TAC §332.61, (relating to General Requirements and Applicability).

§ 335.401. Purpose

The purpose of this subchapter is to provide requirements for interested persons to engage in activities which involve the collection, disposal, or recycling of hazardous household wastes and other types of household waste materials that may, due to their quantity and characteristics, pose a potential endangerment to human health or the environment if improperly handled. The Texas Department of Health and the Texas Water Commission agree to establish and maintain a cooperative effort with regard to providing regulation and direction for hazardous household waste collection programs so as to insure that waste aggregated as a result of such programs is properly handled and disposed of in a safe manner.

Source: The provisions of this §335.401 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions).

§ 335.402. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

Aggregate—The act of bringing together hazardous household waste that, after being separated from other household waste, is collected from two or more households and accumulated at a collection center or transporter's facility for the purpose of disposing of or recycling the waste.

Collection center—A designated site and areas within that site used or planned for use by an operator to aggregate hazardous household waste delivered to the site by individuals, households, or collectors.

Collector—Any person who accepts directly from two or more households any unmanifested waste materials that have been separated from other household waste and offered to the collector because the generator either knows or considers the materials to be hazardous household waste.

Commission—The Texas Water Commission.

Department—The Texas Department of Health.

Division—The Division of Solid Waste Management, Texas Department of Health.

Hazardous household waste—Any solid waste generated in a household by a consumer which, except for the exclusion provided in 40 Code of Federal Regulations §261.4(b)(1), would be classified as a hazardous waste under 40 Code of Federal Regulations, Part 261.

Hazardous waste processing, storage, or disposal facility—A hazardous waste processing, storage, or disposal facility that has received an Environmental Protection Agency (EPA) permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations Parts 270 and 124, or that has received a permit from a state authorized in accordance with 40 Code of Federal Regulations Part 271.

Household—Single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew

~~quarters, campgrounds, picnic grounds, and day~~ use recreational areas.

Recurring collection program—An organized effort to collect and/or aggregate hazardous household waste in a community at scheduled intervals, at least annually.

Source: The provisions of this §335.402 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions); 30 TAC §332.63, (relating to Materials To Be Accepted).

§ 335.403. Authority

(a) Authority of the Texas Department of Health. The Texas Department of Health (the department) is the state agency having responsibility for regulation of nonhazardous municipal solid waste. The department and the commission agree that the department has primary regulatory authority over hazardous household waste; persons who provide point of generation pick-up of hazardous household waste; and persons who establish and operate hazardous household waste collection centers, other than those located at established hazardous waste processing, storage, or disposal facilities which are regulated by the Texas Water Commission (the commission). The following regulatory portions of this subchapter shall be primarily implemented and enforced by the department:

(1) §335.406(a)-(c) of this title (relating to General Requirements for Collectors and Operators);

(2) §335.407(a)-(f) of this title (relating to Operation of Collection Centers);

(3) §335.408 of this title (relating to Household Pick-Up);

(4) §335.410 of this title (relating to Reuse of Collected Material), except in those cases where the collector or operator determining the reuse suitability of the collected material is the owner/operator of a hazardous waste processing, storage, or disposal facility; and

(5) §335.411(b) of this title (relating to General Requirements for Transporters).

(b) Authority of the Texas Water Commission. The Texas Water Commission is the state agency having responsibility for regulating hazardous waste as defined by the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261. Except for collected materials being used or planned to be used or reused in accordance with §335.410 of this title (relating to Reuse of Collected Material), all hazardous household waste once collected and aggregated at a collection center or at a transporter's facility shall be transported only by hazardous waste transporters and shall be shipped only to authorized hazardous waste processing, storage, or disposal facilities. The department and the commission agree that the commission has regulatory authority over persons transporting hazardous household waste that is required when shipped to be accompanied by a manifest, and over all aspects of solid waste management conducted at a hazardous waste processing, storage, or disposal facility. Accordingly, the following regulatory portions of this subchapter shall be primarily implemented and enforced by the commission:

(1) §335.406(d) of this title (relating to General Requirements for Collectors and Operators);

(2) §335.407(g) of this title (relating to Operation of Collection Centers);

(3) §335.410 of this title (relating to Reuse of Collected Material), except in those cases where the collector or operator determining the reuse suitability of the collected material is subject to the requirements of §335.406(a)-(c) of this title (relating to General Requirements for Collectors and Operators);

(4) §335.411(a) of this title (relating to General Requirements for Transporters); and

(5) §335.412 of this title (relating to General Requirements for Processing, Storage, or Disposal Facilities).

(c) Joint authority. The department and commission shall jointly implement, and each may enforce as appropriate, the requirements contained in §335.409 of this title (relating to General Shipping, Manifesting, Recordkeeping, and Reporting Requirements).

Source: The provisions of this §335.403 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions).

§ 335.404. Interagency Coordination

(a) The department shall serve as the lead agency with regard to the regulation of organized hazardous household waste collection and point of generation pick-up programs in the state. The department also shall be the lead agency with regard to the assurance of proper handling of hazardous household wastes at collection centers or transporter facilities, other than at hazardous waste processing, storage, or disposal facilities regulated by the commission.

(b) The division shall be the point of contact between collectors or operators subject to the requirements of §335.406(b) and (c) of this title (relating to General Requirements for Collectors and Operators) and the commission. The division also shall provide the collectors and operators the necessary forms, identification numbers, waste codes, and special instructions from the commission concerning transportation and ultimate disposition of aggregated hazardous household waste.

(c) The department, in adopting these sections, concurs in the processing, storage, disposal, or recycling of hazardous household waste at a hazardous waste facility that has written authorization from the commission to receive such waste.

Source: The provisions of this §335.404 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions).

§ 335.405. Applicability

(a) This subchapter applies to persons who:

(1) collect and/or aggregate hazardous household waste for disposal or recycling;

(2) are involved in the point of generation pickup of hazardous household waste that has been separated by the generator from other solid wastes;

(3) operate hazardous household waste collection centers;

(4) transport any hazardous household waste required by this subchapter to be manifested; and

(5) own or manage a hazardous waste processing, storage, or disposal facility that receives manifested hazardous household waste.

(b) The sections of this subchapter do not apply to individuals who receive from households, for the purpose of recycling or reclamation, used oil or lead acid batteries, provided such individuals do not operate a collection center for other hazardous household waste or other household wastes that fall under the purview of this subchapter.

Source: The provisions of this §335.405 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions).

§ 335.406. General Requirements for Collectors and Operators

(a) Except as provided in subsection (d) of this section, no person may engage in any activity to collect or aggregate hazardous household waste that has been segregated from other solid waste without having first notified the Division of Solid Waste Management, Texas Department of Health (division), in accordance with subsection (b) of this section and without having submitted to the division an operational plan as provided for in subsection (c) of this section. The department may waive the requirements of this section for programs scheduled to be implemented within six months of the date these sections become effective, provided the collector or operator requests such waiver in writing.

(b) The notification shall be submitted 90 days prior to the expected collection date, by letter or on a form provided by the department. It shall include the following information:

(1) name and address of the operator;

(2) name, address, and telephone number of an individual to be the contact person for the operator;

(3) date of planned collection;

(4) areas that are planned to be covered by the collection effort, i.e., city, county, precinct, neighborhood, district, region, etc.;

(5) a conceptual organization of the collection effort with names of persons or groups providing support and identities of all organizations or groups involved together with the operator in any advertising, public service campaigns, or other public information efforts; and

(6) details regarding any planned public information efforts concerning the dangers or risks associated with hazardous household waste, the need or desirability of separating such waste from other household waste, and the procedures for delivery of hazardous household waste to the collection center prior to collection day. Collectors or operators conducting recurring collection programs need not submit a plan for the second and subsequent operations, provided the original or a revised plan has been previously submitted and remains in effect. The plan shall be prepared in format and content as described in paragraphs (1)-(12) of this subsection or as otherwise specified by the division. Changes to the plan may be made after consultation and coordination with the division.

(c) The collector or operator shall submit to the division a complete operational plan not less than 45 days.

~~(1) The plan shall be in a typewritten report~~ form (except for maps and drawings) on 8 ½ inches by 11 inches white paper. All materials in excess of 8 ½ inches by 11 inches shall be folded to that size. Undersized materials shall be mounted on 8 ½ inches by 11 inches paper, and the report stapled in the upper left-hand corner or bound along the left margin. All folded material shall be affixed so it can be unfolded without removing binders.

(2) The title page shall show the name of the project, the location by city and county, name of responsible person, and date of plan.

(3) The table of contents shall list the main sections of the plan.

(4) The plan shall identify the nature, type, and quantity of hazardous household waste and other household wastes proposed for collection and disposal and include a brief description of the general sources and generation areas contributing wastes.

(5) If the waste is to be collected from households by a point of generation pick-up service, the plan shall describe in detail how this is to be done.

(6) The plan will describe the approximate number of residences, institutions (identify types), and business establishments within 300 feet of the proposed collection center, including the distances and directions to the nearest residence, institution, or business.

(7) Information relating to adequacy of roads or streets to be used to enter or exit the collection center shall be submitted as part of the plan.

(8) The plan shall identify the type and location of fences or other means of access control to protect the public from exposure to potential health and safety hazards and to discourage unauthorized entry.

(9) The following operational concepts shall be discussed in detail:

(A) the storage of waste at the collection center;

(B) provisions for inclement weather operation, e.g., alternate collection site, or alternate collection day, etc.;

(C) provisions for wastes requiring special handling and for wastes that are identified as nonhazardous;

(D) provisions for classifying and controlling the wastes;

~~(E) procedures to ensure that unauthorized~~ waste, i.e., hazardous waste (or Class I industrial solid waste) from industries, businesses, or institutions subject to regulations of the commission, is not accepted as hazardous household waste;

(F) fire control measures, e.g., availability of local fire departments and on-site fire fighting equipment;

(G) spill control measures and cleanup procedures;

(H) the minimum required number of personnel, their functions, and their qualifications;

(I) provisions for security, screening waste for acceptability, traffic control, and safety;

(J) measures to control unloading within the collection center; and

(K) the posting of signs at the collection center and enforcement of site rules.

(10) The operator shall provide information on the planned disposal of the waste collected, to include the transporter's name and the United States Environmental Protection Agency identification number, and the name, location, and the United States Environmental Protection Agency identification number of the hazardous waste facility which is to be used for the processing, storage, disposal, or recycling of the waste. The operator, in developing the plan for disposal of waste to be received at the collection center, should determine the feasibility of managing collected hazardous household waste in the following order of preference:

(A) reuse and/or recycling of waste;

(B) treatment to destroy hazardous characteristics;

(C) treatment to reduce hazardous characteristics;

(D) underground injection; and

(E) land disposal.

(11) The operator shall provide information on planned disposition of materials that are accepted at the collection center that are in usable condition.

(12) The plan shall include the following attachments:

(A) Attachment 1—general location map. This map should be all or a portion of a half-scale county map, prepared by the Transportation Planning Division of the State Department

~~of Highways and Public Transportation, with~~ the collection site marked and labeled thereon in a manner that will facilitate determining the general location of the site and roadway access. If the site is located within a city, a city map may be used for this purpose.

(B) Attachment 2—planimetric map. This will normally be a constructed map showing the features of the collection center. It need not be drawn to scale but the improvements and boundaries should fairly represent the collection center area. The map should be annotated to show flow of traffic, unloading points, location of emergency vehicles, and classification and storage areas.

(C) Attachment 3—evidence of financial responsibility. Collectors or operators other than governmental entities shall submit evidence of financial responsibility which assures the department that sufficient assets are available to properly operate the collection center, enable appropriate shipment and disposal of the waste, and to provide for proper closure of the collection center. The amount and type of financial assurance shall be determined by the division after discussing the scope of the collection effort with the operator.

(D) Attachment 4—evidence of competency. Evidence of competency to operate the center shall be provided, to include experience and qualifications of key personnel.

(E) Attachment 5—responsible party's statement. The operator or the authorized representative empowered to make commitments for the operator shall provide a statement that he or she is familiar with the operational plan and is aware of all commitments represented in the plan and that he or she is also familiar with all pertinent requirements in these regulations and agrees to develop and operate the site in accordance with the regulations and any special written instructions from the division.

(d) Owners or operators of hazardous waste processing, storage, or disposal facilities who accept or intend to accept unmanifested hazardous household waste directly from household waste generators or their representatives are not subject to the requirements of this section, provided that prior to first accepting such waste they notify the executive director of the Texas Water Commission in writing concerning their intention to accept such waste, ~~and in the notification indicate:~~

~~(1) their Texas Water Commission registration~~ number and Environmental Protection Agency identification number;

(2) the date they intend to start receiving such hazardous household waste;

(3) the kinds of hazardous household waste and other household waste they intend to accept;

(4) the types or classes of waste that will not be accepted;

(5) the information to be required from each generator so as to enable proper classification and handling of waste;

(6) how they intend to handle on-site wastes which may be accepted and what the ultimate disposition of the wastes will be;

(7) the methods and procedures to be utilized so as to assure that only household waste is accepted; and

(8) the identities of all organizations or groups involved together with the notifier in any advertising, public service campaigns, or other public information efforts concerning the dangers or risks associated with hazardous household waste, the need or desirability of separating such waste from other household solid waste, and the procedures by which the household waste generator may deliver his or her hazardous household waste to the notifier's facility.

Source: The provisions of this §335.406 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions); 30 TAC §335.403, (relating to Authority); 30 TAC §335.404, (relating to Interagency Coordination); 30 TAC §335.407, (relating to Operation of Collection Centers); 30 TAC §335.411, (relating to General Requirements for Transporters).

§ 335.407. Operation of Collection Centers

(a) Minimum requirements. Except as provided in subsection (g) of this section, collection centers established for the purpose of accepting and aggregating hazardous household waste must be operated so as to comply with the minimum requirements set forth in subsections (b)-(f) of this section.

(b) Location. Collection centers shall be located, organized, and operated so as to safeguard the health, welfare, and physical property of the people, and to protect the environment. At a minimum, collection centers shall:

(1) be located based on the types and quantities of waste to be collected and suitability of the site ~~for collecting such waste;~~

(2) provide parking for the public and for essential project vehicles so as not to interfere with the safe entry and exit of traffic;

(3) whenever possible, be structured in a way that allows incoming wastes to be sorted upon arrival and placed in a controlled area for packaging;

(4) keep incompatible wastes separated, including unidentified wastes, while they are waiting to be packaged for further storage or transport;

(5) provide an area, not generally accessible to the public, for sorting, packaging, and handling waste that is accepted;

(6) have designated eating, drinking, and smoking areas for personnel working at the center (such activities shall be prohibited at the collection center work area);

(7) be prepared for the possibility of inclement weather; and

(8) have materials and procedures to control spills.

(c) Personnel. Personnel who work at the collection center shall be familiar with the operational plan. Other requirements pertaining to personnel utilized at the collection center are included in paragraphs (1)-(8) of this subsection.

(1) Personnel who sort and package waste or who supervise these activities for transport to a hazardous waste facility must be trained and knowledgeable concerning the incompatibility of various classes of waste and be qualified to package waste for transport.

(2) At least one person trained to classify hazardous waste and who is competent to perform tests to identify characteristics of hazardous waste (e.g., pH, flammability, etc.) shall be utilized at the collection center to accept or supervise the acceptance of waste at the center.

(3) Personnel involved with handling waste must be instructed in accident prevention, the proper response to fires, explosions, and spills, and in the use of protective devices (such as respiratory gear and gloves) to minimize exposure to hazardous household waste.

(4) Packaging and labeling of waste shall be supervised by a person familiar with the shipping requirements and hazardous waste manifest requirements of the U.S. Department of Transportation (DOT) for packaging, placarding, and labeling of hazardous materials.

(5) At least one person must be on site who is trained to perform general first aid and who is knowledgeable concerning safety measures to be taken in the event of an accidental contact with a hazardous household waste.

(6) An on-site supervisor must be available and responsible for initiating an emergency response plan that includes site evacuation procedures. The on-site supervisor also assumes responsibility for accepting any unidentified wastes and insuring proper handling and disposal.

(7) The on-site supervisor shall have the authority to remove anyone from the site and prohibit re-entry if it is determined that the person threatens site security or personnel safety.

(8) Manning of the collection center shall consist of an adequate number of persons who jointly possess the necessary skills and expertise needed to accept, sort, package, transport, and manifest the waste and be responsible for on-site supervision and public relations.

(d) Equipment and materials. Equipment and materials shall be available at the collection center to provide protection, safety, and first aid for persons operating the center, to contain and clean up spills, and to properly handle, classify, package, and label the waste. All disposable cleanup materials and protective clothing used during a spill cleanup shall be handled as a hazardous household waste. Nondisposable equipment and materials that are used and contaminated shall be decontaminated before removal from the site. At a minimum, the provision for equipment and material shall include:

(1) a first aid kit available at each collection center and on each point of generation pick-up service vehicle;

(2) a method of communication in the event of a spill, personal injury, etc., at the site and in the point of generation pick-up vehicle. Such method of communication may include a telephone or a citizen's band (CB) radio;

(3) an eyewash, shower station, or hosing device and fire extinguisher; and

(4) sufficient spill containment and absorbent materials at the collection center and on each point of generation waste collection vehicle to contain a spill of 10% of the anticipated volume of collected liquid waste.

(e) Waste accepted and excluded. The collection center should accept only household wastes. The operator shall take necessary precautions to pro-

~~hibit the receipt of waste defined as a hazardous~~ waste by the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7; or as Class I industrial solid waste by the commission. Other requirements related to acceptance or exclusion of wastes are as follows:

(1) Any unidentified waste accepted shall be identified by a chemist or trained individual knowledgeable in chemical characteristics and incompatibilities before being packaged for transport. Wastes that cannot be identified by physical assessment or conversation with the generator or his representative may not be packaged until the substance or waste has been analyzed and the appropriate chemical class has been identified.

(2) Announcements and promotional material shall state that compressed gas or explosives (including ammunition) shall not be brought to the collection center. However, if such materials are brought to the collection center, the staff should accept the waste and immediately contact the appropriate authorities, e.g., explosives experts, etc., to properly dispose of the waste.

(3) Decisions to accept certain wastes shall depend on the capabilities of the personnel collecting, sorting, and packaging the waste. A generic list of proposed wastes to be accepted must be submitted to the division with the operational plan. The list should be developed with the intent of minimizing the need for chemical analysis of unidentifiable wastes.

(4) Empty hazardous material and pesticide containers from households may be disposed of as a nonhazardous waste if they are rendered unusable before leaving the collection center.

(5) A container shall be provided at the collection center for collection and storage of waste received at the center, that because of quantity and characteristics, does not pose a potential endangerment to human health on the environment if disposed of in a municipal solid waste facility.

(f) Temporary storage. Storage at the collection center, or other site identified in the operational plan, shall be operated and maintained so as to provide safe handling and storage of waste awaiting final disposition. The facility shall be secured to control access by the public. Operators shall comply with paragraphs (1)-(3) of this subsection when ~~storing aggregated hazardous household waste~~.

~~(1) An operator shall not store aggregated haz-~~ardous household waste longer than 10 days except under one of the conditions described in subparagraphs (A)-(C) of this paragraph.

(A) The storage facility is an authorized hazardous waste processing, storage, or disposal facility.

(B) The operator requests in writing and obtains a storage time extension from the division.

(C) The operator is conducting a recurring collection program and does not accumulate more than 3,000 kilograms of hazardous household waste and does not store the waste longer than 180 days.

(2) A label shall be maintained on all containers in which hazardous household waste is stored and shall indicate:

(A) composition and physical state of the waste;

(B) special safety recommendations and precautions for handling the waste;

(C) statement(s) which call attention to the particular hazardous properties of the waste; and

(D) date of acceptance at the collection center.

(3) Records for storage of all hazardous household wastes shall be maintained to include all the information necessary to complete manifests for the wastes. (Copies of manifests may be used in lieu of a separate record).

(g) Requirements for hazardous waste facilities. Facilities which qualify as hazardous waste processing, storage, or disposal facilities and whose owners and operators comply with the notification requirements of §335.406(d) of this title (relating to General Requirements for Collectors and Operators) are not subject to the requirements of this section, except for the requirements of subsection (c) of this section with respect to personnel; subsection (d) of this section with respect to disposal of cleanup materials and protective clothing used during a spill cleanup; and subsection (f)(2) and (3) of this section with respect to container labeling and recordkeeping.

Source: The provisions of this §335.407 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions); 30 TAC §335.403, (relating to Authority); 30 TAC §335.409, (relating to General Shipping, Manifesting, Recordkeeping, and Reporting Requirements).

~~§ 335.408. Household Pick-up~~

Collectors or operators offering point of generation pick-up service for hazardous household waste that has been segregated from other household waste shall:

(1) develop and implement a collection program that minimizes the potential for human and animal exposure to such waste (unless the pick-up procedures involve personal contact with the generator, the collector shall provide instructions to households on details of packaging, labeling, securing, and any other procedures to safeguard humans and animals and to protect the environment);

(2) have a person in each crew that has experience and training in handling hazardous waste, including waste classification, waste incompatibility, spill prevention, and clean-up safety; and

(3) deliver such waste to a collection center to be aggregated with other hazardous household waste, to a transporter's facility or to a hazardous waste processing, storage, or disposal facility that is authorized by the commission to accept hazardous household waste.

Source: The provisions of this §335.408 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions); 30 TAC §335.403, (relating to Authority).

§ 335.409. General Shipping, Manifesting, Recordkeeping, and Reporting Requirements

Except for those collected reusable materials handled in accordance with the requirements of §335.410 of this title (relating to Reuse of Collected Material) and waste received at the center, which can be disposed of at a municipal solid waste facility in accordance with the requirements of §335.407 of this title (relating to Operation of Collection Centers), persons who collect, receive, or aggregate hazardous household waste shall:

(1) when transporting or shipping such waste from a collection center or from a transporter's facility utilize only hazardous waste transporters who have notified the commission with respect to transportation of hazardous waste, who have notified the United States Environmental Protection Agency of their involvement in transporting hazardous waste, and who have been issued an Environmental Protection Agency identification ~~number;~~

~~(2) transport or ship such waste only to receiv~~ers who qualify as hazardous waste processing, storage, or disposal facilities, that have agreed to accept the waste, and that have authorization to receive such wastes;

(3) assure, prior to offering such waste for shipment, that such waste is packaged and labeled so as to comply with applicable United States Department of Transportation (DOT) requirements and to comply with the requirements contained in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste);

(4) retain for at least one year from the date of shipment copies of all manifests utilized for the shipment of such waste; and

(5) provide, within 30 days of receiving the completed copy of such manifests showing the signature of the receiver and date of receipt, a copy of the completed manifest to the division, or in those cases where the person shipping the waste is the owner or operator of a hazardous waste processing, storage, or disposal facility, to the commission.

Source: The provisions of this §335.409 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions); 30 TAC §335.403, (relating to Authority).

§ 335.410. Reuse of Collected Material

Any material collected or accepted at a collection center in its original container with a legible label or that is otherwise readily identifiable and which has been determined by the collector or operator to be in a usable condition may be removed from the aggregated hazardous household waste and provided to a governmental entity, institution, or other responsible party for use.

Source: The provisions of this §335.410 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions); 30 TAC §335.403, (relating to Authority); 30 TAC §335.409, (relating to General Shipping, Manifesting, Recordkeeping, and Reporting Requirements).

§ 335.411. General Requirements for Transporters

(a) No person shall transport any hazardous household waste required by this subchapter to be accompanied by a uniform hazardous waste manifest obtained from the commission, unless such ~~person:~~

(1) has notified the Texas Water Commission with respect to such transportation activities in accordance with the requirements contained in §335.6(e) of this title (relating to Notification Requirements);

(2) has notified the United States Environmental Protection Agency as to his or her transporter status, and has been issued an Environmental Protection Agency identification number;

(3) complies with the requirements outlined in §335.11 of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste) with respect to all manifested household waste;

(4) complies with the requirements outlined in §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste) with respect to all manifested household waste; and

(5) complies with the requirements of paragraphs (1)-(3) of §335.4 of this title (relating to General Prohibitions) with respect to all waste accepted or handled.

(b) Transporters engaged in point of generation pick-up of hazardous household waste, who operate or intend to operate hazardous household waste collection centers, or who otherwise handle or accept unmanifested hazardous household waste, are subject to all the requirements of this subchapter set forth for collectors and shall comply with paragraphs (1)-(4) of this subsection.

(1) Prior to engaging in such activity, notify and submit a plan to the division in accordance with §335.406 of this title (relating to General Requirements for Collectors and Operators).

(2) All activities to collect and/or aggregate hazardous household waste shall be in accordance with rules of this subchapter applicable to collectors and operators and written instructions from the division.

(3) All hazardous household waste accumulated by the transporter shall be kept separate and apart from hazardous waste or Class I industrial solid waste as defined in the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, which may be accumulated at a transporter's facilities.

(4) Transporters performing service under this subsection shall comply with requirements specified for operators or collectors engaged in similar activities.

Source: The provisions of this §335.411 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions); 30 TAC §335.403, (relating to Authority).

§ 335.412. General Requirements for Processing, Storage, or Disposal Facilities

Owners or operators of hazardous waste processing, storage, or disposal facilities may receive manifested shipments of hazardous household waste or other household waste provided they:

(1) comply with the requirements of §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) with respect to all manifested wastes received;

(2) comply with the requirements of §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) with respect to all manifested wastes received;

(3) handle on-site all received or aggregated hazardous household waste in the same manner as if the waste were defined as a hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7;

(4) comply with the requirements of paragraphs (1)-(3) of §335.4 of this title (relating to General Prohibitions) with respect to all waste received; and

(5) obtain written authorization from the commission to receive hazardous household waste.

Source: The provisions of this §335.412 adopted to be effective March 12, 1987, 12 TexReg 666.

Cross References: This Section cited in 30 TAC §330.2, (relating to Definitions); 30 TAC §335.403, (relating to Authority).

Subchapter O. LAND DISPOSAL RESTRICTIONS

Authority: The provisions of this Subchapter O issued under the Texas Water Code, §5.103 and §5.105; and the Texas Health and Safety Code, §361.017 and §361.024.

Cross References: This Subchapter cited in 30 TAC §335.41, (relating to Purpose, Scope, and Applicability).

§ 335.431. Purpose, Scope, and Applicability

(a) Purpose. The purpose of this subchapter is to identify hazardous wastes that are restricted from land disposal and define those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Scope and applicability.

(1) Except as provided in paragraph (2) of this subsection, the requirements of this subchapter apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(2) The requirements of this subchapter do not apply to any entity that is either specifically excluded from coverage by this subchapter or would be excluded from the coverage of 40 Code of Federal Regulations (CFR), Part 268, by 40 CFR, Part 261, if those parts applied.

(c) Adoption by reference.

(1) Except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR Part 268, as amended through January 3, 1995, in 60 FedReg 242 are adopted by reference.

(2) The following sections of 40 CFR, Part 268, are excluded from the sections adopted in paragraph (1) of this subsection: §§268.5, 268.6, 268.7(a)(10), 268.10-268.13, 268.42(b), and 268.44.

(3) Appendices I-X of 40 CFR Part 268 are adopted by reference as amended through January 3, 1995, in 60 FedReg 242.

(d) Changes to adopted parts. The parts of the CFR that are adopted by reference in subsection (c) of this section are changed as follows.

(1) The words "Administrator" or "Regional Administrator" are changed to "Executive Director."

(2) The word "treatment" is changed to "processing."

(3) The words "Federal Register," when they appear in the text of the regulation, are changed to "Texas Register."

(4) In §268.7(a)(6) and (a)(7), the applicable definition of hazardous waste and solid waste is the one that is set out in this chapter rather than the definition of hazardous waste and solid waste that is set out in 40 CFR Part 261.

(5) In §268.50(a)(1), the citation to "§262.34" is changed to "§335.69."

Source: The provisions of this §335.431 adopted to be effective November 23, 1993, 18 TexReg 8218; amended to be effective February 22, 1994, 19 TexReg 969; amended to be effective March 22, 1995, 20 TexReg 1657.

~~Subchapter P. WARNING SIGNS AND~~ CONTAMINATED AREAS

Authority: The provisions of this Subchapter P issued under the Texas Water Code, §5.103 and §5.105; and the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, Annotated, ~~§361.017 and §361.024~~.

~~§ 335.441. Purpose, Scope, and Applicability~~

The purpose of this subchapter is to provide standards and procedures for the placement of warning signs on property contaminated with hazardous substances when such contamination presents a danger to public health and safety.

Source: The provisions of this §335.441 adopted to be effective October 31, 1990, 15 TexReg 6068.

§ 335.442. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Contaminated property—Property on which hazardous substances in known or potentially harmful quantities have been released, spilled, leaked, pumped, poured, emitted, entered, or dumped.

Emergency—Any situation in which an immediate threat to public health and safety exists from releases or threatened releases of hazardous substances on contaminated property.

Hazardous substances—

(A) A substance designated pursuant to the Federal Water Pollution Control Act, §311(b)(2)(A), as amended (33 United States Code 1321).

(B) An element, compound, mixture, solution, or substance designated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, §102, as amended (42 United States Code 9602).

(C) A hazardous waste having the characteristics identified under or listed pursuant to the federal Solid Waste Disposal Act, §3001, as amended (42 United States Code 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 United States Code 6901 et seq.) has been suspended by Act of Congress.

(D) A toxic pollutant listed under the Federal Water Pollution Control Act, §307(a), as ~~amended (33 United States Code 1317)~~.

(E) A hazardous air pollutant listed under the federal Clean Air Act, §112, as amended (42 United States Code 7412).

(F) Any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action pursuant to the Toxic Substances Control Act, §7 (15 United States Code 2606).

(G) Does not include petroleum, which means crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A)-(F) of this definition; nor does it include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; nor does it include waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101.

Property owner—The person or persons who own contaminated property.

Remedial action—This term shall have the same meaning as in Subchapter K of this chapter (relating to Hazardous Waste Facilities Assessment and Remediation).

Warning sign—A sign which provides public notice that a particular property is contaminated with hazardous substances and that entry on the property presents a potential hazard to public health and safety. The sign may either be placed by the commission or made and placed in accordance with commission specifications.

Written consent form—A document signed by the property owner which states that the property owner agrees to the placement of warning signs on his property. The document shall be signed as follows.

(A) If the property owner is an individual, the written consent form shall be signed by the property owner or the property owner's approved agent. An agent shall provide written evidence of his or her authority to represent the property owner. If the property owner is an individual doing business under an assumed name, an assumed name certificate must be obtained from the county clerk of the county in which the principal place of business or the contaminated property is located.

(B) If the property is jointly owned, the written consent form shall be signed by each property owner or each property owner's duly authorized agent, with written evidence of such agency relationship to be submitted with the written consent form. If land is owned by both husband and wife, each shall sign the written consent form. If the joint owners are doing business under an assumed name, an assumed name certificate must be obtained from the county clerk of the county in which the principal place of business or the contaminated property is located.

(C) If the property is owned by a partnership, the written consent form shall be signed by one of the general partners. If the partnership is doing business under an assumed name, an assumed name certificate must be obtained from the county clerk of the county in which the principal place of business or the contaminated property is located.

(D) If the property is part of an estate or guardianship, the written consent form shall be signed by the duly appointed guardian or representative of the estate and a current copy of any and all document(s) issued by the court appointing the guardian or the representative of the estate shall be attached to the written consent form.

(E) If the property owner is a corporation, public district, county, municipality, or other corporate entity or political subdivision, the written consent form shall be signed by a duly authorized official. Written evidence in the form of bylaws, charters, or resolutions which specify the authority of the official to take such action shall be submitted. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(F) If the signatory is acting as trustee for another person, the signatory shall sign as trustee, and in the written consent form shall disclose the nature of the trust agreement and give the name and current address of each trust beneficiary. Each signatory shall subscribe to and swear to the written consent form before a person entitled to administer oaths, who shall also sign his or her name and affix his or her seal of office to the written consent form.

Source: The provisions of this §335.442 adopted to be effective October 31, 1990, 15 TexReg 6068.

§ 335.443. Determination of Potential Hazard to Public Health

(a) Prior to placing warning signs on contaminated property, a determination must be made by the executive director of the Texas Water Commission that there exists a potential hazard to public health and safety which will be eliminated or reduced by placing a warning sign on the contaminated property. The executive director of the Texas Water Commission may consult with the Texas Department of Health in making this determination where appropriate. During the initial site investigation, if there is sufficient information, the following factors should be considered in determining whether a potential hazard to public health and safety exists:

(1) character of the contaminant(s), based on labeling, type of container, if any, the presence of any marking or labeling indicating the contents of any container present, laboratory analyses of the contaminant(s), or media containing the contaminant(s), or other relevant factors;

(2) amount and/or suspected concentration of the contaminant(s);

(3) the known or suspected health effects of the contaminant(s);

(4) accessibility of the contaminated area to the public;

(5) route(s) of exposure;

(6) proximity of schools, hospitals, and residential areas; and

(7) potential for wind dispersal or other potential pathway(s) for migration of the contaminant(s).

(b) It is presumed by the Texas Water Commission that a hazard to the public health and safety exists if, at any point during the site investigation, the following conditions are found:

(1) illnesses are observed or alleged to be related to the contaminants present at the site;

(2) known or suspected toxic or carcinogenic materials are detected at concentrations which could potentially affect public health and safety;

(3) mutagenic, teratogenic, or other materials which may be detrimental to reproduction are discovered; or

(4) hazardous substances are found in an area accessible to the public.

Source: The provisions of this §335.443 adopted to be effective October 31, 1990, 15 TexReg 6068.

§ 335.444. Property Owner Consents to the Placement of Warning Signs

Whenever possible, written consent should be obtained from the property owner of the contaminated property on which the warning signs are to be placed. The commission may place warning signs on contaminated property if prior written consent is obtained from the property owner for such placement.

Source: The provisions of this §335.444 adopted to be effective October 31, 1990, 15 TexReg 6068.

§ 335.445. Placement of Warning Signs without the Property Owner's Consent

The commission shall issue an order to authorize the placement of warning signs on contaminated property if no written consent has been obtained for such placement from the property owner. In nonemergency situations, an opportunity for a hearing on the placement of warning signs shall be afforded to the property owner in accordance with the contested case provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13A, §13.

Source: The provisions of this §335.445 adopted to be effective October 31, 1990, 15 TexReg 6068.

§ 335.446. Emergency Placement of Warning Signs

If an emergency exists which requires the immediate placement of warning signs on contaminated property to protect the public health and safety and the property owner has not provided written consent to the placement of warning signs, an emergency order authorizing the placement of warning signs on the contaminated property may be issued without notice and a hearing by the commission or with such notice and hearing as are practicable. If an emergency order is issued by the commission pursuant to this section, the commission shall fix a time and place for a hearing to affirm, modify, or set aside the emergency order. Notice of the hearing to affirm, modify, or set aside the emergency order shall be provided in accordance with the provisions set forth in Chapter 305, Subchapter B of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations).

Source: The provisions of this §335.446 adopted to be effective October 31, 1990, 15 TexReg 6068.

~~§ 335.447. Reporting of Placement of Warning Signs~~

Any commission employee who places or requests the placement of a warning sign on contaminated property must file a report with the commission's central office in Austin within 10 days of such a request or placement. The report must include the following information, if known:

(1) the name and office telephone number of the reporting individual;

(2) the name and telephone number of the commission personnel investigating the site;

(3) the location of the contaminated property;

(4) the identity of the contaminant(s);

(5) the physical and chemical properties of the contaminant(s);

(6) the source of the contamination;

(7) the extent of the area impacted by the contamination;

(8) condition(s) affecting the migration of the contamination including surface water runoff, release(s) to the air, releases to the groundwater, prevailing weather, and/or any fire(s);

(9) the extent of the actual and potential exposure to the contaminant(s) including exposure by emergency personnel, occupational exposure, and real or potential exposure to the public;

(10) a description of the procedures used or proposed to be used to determine whether warning signs are necessary and to determine the appropriate placement of the warning signs;

(11) when and where warning signs were placed or are proposed to be placed;

(12) whether written consent was obtained from the property owner; and

(13) a copy of any written consent obtained from the property owner.

Source: The provisions of this §335.447 adopted to be effective October 31, 1990, 15 TexReg 6068.

§ 335.448. Removal of Warning Signs

Warning signs shall be removed from the contaminated property upon approval of the executive director or the commission after either:

(1) the property owner has provided the commission with documentation that remedial action on the contaminated property is complete and no further hazard to the public health and safety exists and the commission has independently verified the information provided; or

(2) the commission has independently determined that remedial action on the contaminated property is complete and no further hazard to the public health and safety exists.

Source: The provisions of this §335.448 adopted to be effective October 31, 1990, 15 TexReg 6068.

Subchapter Q. POLLUTION PREVENTION; SOURCE REDUCTION AND WASTE MINIMIZATION

Authority: The provisions of this Subchapter Q issued under the Texas Water Code, §5.104 and §26.011; and the Texas Solid Waste Disposal Act, §3 and §4.

§ 335.471. Definitions

The words and terms used in this subchapter have the meanings given in the Waste Reduction Policy Act of 1991, Senate Bill 1099, or the regulations promulgated thereunder. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Further, the following words and terms, as defined herein, shall only have application to this subchapter.

Acute hazardous waste—Hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976 (42 United States Code §6901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 Code of Federal Regulations §261.11(a)(2).

Board—The Texas Air Control Board.

Commission—The Texas Water Commission.

Committee—The waste reduction advisory committee established by the Texas Solid Waste Disposal Act, the Health and Safety Code, §361.0215.

Conditionally exempt small quantity generator—A generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

Environment—Water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

Facility—All buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this

~~subchapter or by a person who controls, is con-~~ trolled by, or is under common control with a person subject to this subchapter.

Generator and generator of hazardous waste—Have the meaning assigned by the Texas Solid Waste Disposal Act, the Health and Safety Code, §361.131.

Large quantity generator—A generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

Media and medium—Air, water, and land into which waste is emitted, released, discharged, or disposed.

Pollutant or contaminant—Includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under §101(14)(A)-(F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

Release—Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 United States ~~Code §2011 et seq.), if the release is subject to~~ requirements concerning financial protection established by the Nuclear Regulatory Commission under that Act, §170;

(D) for the purposes of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 United States Code §9601 et seq.), §104, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978 (42 United States Code §7912 and §7942), §102(a)(1) or §302(a); and

(E) the normal application of fertilizer.

Small quantity generator—A generator that generates through ongoing processes and operation at a facility:

(A) equal to or less than 1,000 kilograms but more than or equal to 100 kilograms of hazardous waste in a month; or

(B) equal to or less than one kilogram of acute hazardous waste in a month.

Source reduction—Has the meaning assigned by the federal Pollution Prevention Act of 1990, Publication Law 101-508, §6603, 104 Stat. 1388.

Tons—2,000 pounds, also referred to as short tons.

Toxic release inventory (TRI)—A program which includes those chemicals on the list in Committee Print Number 99-169 of the United States Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA, 42 United States Code §11023), §313" including any revised version of the list as may be made by the administrator of the Environmental Protection Agency (EPA).

Waste minimization—A practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

Source: The provisions of this §335.471 adopted to be effective January 3, 1992, 16 TexReg 7532.

§ 335.472. Pollutants and Contaminants

The following pollutants and contaminants are subject to source reduction and waste minimization planning:

~~(1) all hazardous wastes generated;~~

~~(2) all chemicals which exceed threshold re~~porting requirements pursuant to Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), §313.

Source: The provisions of this §335.472 adopted to be effective January 3, 1992, 16 TexReg 7532.

Cross References: This Section cited in 30 TAC §335.474, (relating to Source Reduction and Waste Minimization Plans).

§ 335.473. Applicability

This subchapter applies to facilities which are required to develop a source reduction and waste minimization plan pursuant to the Waste Reduction Policy Act of 1991, Senate Bill 1099, or the regulations promulgated thereunder, including:

(1) all large quantity generators of hazardous waste;

(2) all generators other than large quantity generators and conditionally exempt small quantity generators as defined by the Health and Safety Code, §361.431(3);

(3) persons subject to §313, Title III, Superfund Amendments and Reauthorization Act of 1986 (Emergency Planning and Community Right-To-Know Act (EPCRA), 42 United States Code §11023). These toxic release inventory (TRI) covered facilities would be required to develop source reduction and waste minimization plans for only the TRI listed chemicals that exceed threshold quantities established under EPCRA.

Source: The provisions of this §335.473 adopted to be effective January 3, 1992, 16 TexReg 7532.

Cross References: This Section cited in 30 TAC §335.474, (relating to Source Reduction and Waste Minimization Plans); 30 TAC §335.475, (relating to Implementation Dates); 30 TAC §335.476, (relating to Reports and Recordkeeping); 30 TAC §335.477, (relating to Exemptions).

§ 335.474. Source Reduction and Waste Minimization Plans

All persons identified under §335.473 of this title (relating to Applicability) shall prepare a five year (or more) source reduction and waste minimization plan which may be updated annually as appropriate according to the schedule listed in §335.475 of this title (relating to Implementation Dates). Plans shall be updated as necessary to assure that there never exists a time period for which a plan is not in effect. Prior to completion of the plan and each succeeding plan, a new five-year (or more) plan shall be prepared. Plans prepared under paragraphs (1)-(3) of this section shall contain a ~~separate component addressing source reduction activities and a separate component addressing waste~~ minimization activities.

(1) With the exception of small quantity generators which are subject to paragraph (3) of this section, the plan shall include, at a minimum:

(A) an initial survey that identifies:

(i) for facilities described in §335.473(1) of this title (relating to Applicability), activities that generate hazardous waste; and

(ii) for facilities described in §335.473(3) of this title (relating to Applicability), activities that result in the release of pollutants or contaminants designated under §335.472 of this title (relating to Pollutants and Contaminants);

(B) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(C) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(D) an estimate of the type and amount of reduction anticipated;

(E) a schedule for the implementation of each source reduction and waste minimization project;

(F) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(G) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(H) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;

(I) identification of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium; and

(J) an executive summary of the plan which ~~shall include at a minimum:~~

~~(i) a description of the facility which shall~~ include:

(I) name of the facility;

(II) address;

(III) contact;

(IV) a general description of the facility; and

(V) Texas Air Control Board (TACB) account number, Texas Water Commission (TWC) solid waste notice of registration number, TWC wastewater permit number, Environmental Protection Agency (EPA) identification number (RCRA number), National Pollutant Discharge Elimination System (NPDES) permit number, and underground injection well code identification number;

(ii) a list of all hazardous wastes generated and the volume of each;

(iii) a list of all reportable TRI releases and the volume of each;

(iv) a prioritized list of pollutants and contaminants to be reduced;

(v) a statement of reduction goals;

(vi) an explanation of environmental and human health risks considered in determining reduction goals;

(vii) implementation milestones for individual project development;

(viii) an implementation schedule for future reduction goals; and

(ix) identification and description of cases in which the implementation of source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in characteristic of the normal waste stream or release and how it will be managed in that affected medium.

(2) The source reduction and waste minimization plan may also include:

(A) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(B) a discussion of the effect changes in ~~environmental regulations have had on the achievement of the source reduction and waste~~ minimization goals;

(C) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(D) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(E) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(3) The plans of small quantity generators shall include, at a minimum:

(A) a description of the facility which shall include:

(i) name of the facility;

(ii) address;

(iii) contact;

(iv) general description of the facility; and

(v) TACB account number, TWC solid waste notice of registration number, TWC wastewater permit number, EPA identification number (RCRA number), NPDES permit number, and underground injection well code identification number;

(B) a list of all hazardous wastes generated and the volume of each;

(C) a list of all reportable TRI releases and the volume of each;

(D) a prioritized list of pollutants and contaminants to be reduced;

(E) a statement of reduction goals;

(F) information on environmental and human health risks, such as material safety data sheets or other available documentation, considered in determining reduction goals;

(G) implementation milestones for individual project development;

(H) an implementation schedule for future reduction goals; and

(I) identification and description of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in

characteristic of the normal waste stream or release and how it will be managed in that affected medium;

(J) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;

(K) an executive summary of the plan which shall include at a minimum:

(i) a description of the facility which shall include:

(I) name of facility;

(II) address;

(III) contact;

(IV) EPA ID, TNRCC solid waste notice of registration number;

(V) primary SIC code;

(ii) a projection of the amount of hazardous waste that the facility will generate (based on what is reported as hazardous waste under §335.9 of this title (relating to Record Keeping and Annual Reporting Procedures Applicable to Generators)) at the end of the five-year period that the plan is in place;

(iii) prioritized list of pollutants and contaminants to be reduced;

(iv) a list of source reduction activities associated with reductions of pollutants identified under subparagraph (D) of this paragraph.

(4) The executive summary may include:

(A) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(B) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(C) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(D) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

Source: The provisions of this §335.474 adopted to be effective January 3, 1992, 16 TexReg 7532; amended to be effective December 25, 1995, 20 TexReg 10374.

Cross References: This Section cited in 30 TAC §335.476, (relating to Reports and Recordkeeping).

§ 335.475. Implementation Dates

All facilities subject to this subchapter shall develop a source reduction and waste minimization plan. The implementation year shall be determined by the prior year's reported volumes of hazardous waste generated and/or total toxic release inventory (TRI) releases. A facility once subject to this subchapter shall remain subject until it no longer meets the requirements of §335.473 of this title (relating to Applicability) or are exempted under §335.477 of this title (relating to Exemptions). Volumes for calculations will be based on total hazardous waste generated and/or total TRI releases. The executive summary shall be submitted to the commission and the board on the date the plan is required to be in place. Plan implementation will be according to the following schedule.

(1) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than July 1, 1993, for:

(A) hazardous waste generators reporting 5,000 tons or more; or

(B) TRI facilities reporting 100 tons or more.

(2) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than January 1, 1994, for:

(A) hazardous waste generators reporting less than 5,000 tons but more than or equal to 500 tons; or

(B) TRI facilities reporting less than 100 tons but more than or equal to 10 tons.

(3) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than January 1, 1995, for:

(A) hazardous waste generators reporting less than 500 tons but more than or equal to 15 tons; or

(B) TRI facilities reporting less than 10 tons but more than or equal to five tons.

(4) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than January 1, 1996, for:

(A) hazardous waste generators reporting less than 15 tons but more than or equal to five tons; or

(B) TRI facilities reporting less than five tons but more than or equal to one ton.

(5) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than January 1, 1997, for:

(A) hazardous waste generators reporting less than five tons but greater than 1.102 tons (1,000 kilograms); or

(B) TRI facilities reporting less than one ton.

(6) After the effective date of this subchapter, any facility which becomes subject to the requirement to have a source reduction and waste minimization plan, either within 90 days prior to or at any time following the dates referenced in paragraphs (1)-(5) of this section, shall have 90 days to have the plan in place and available for review.

Source: The provisions of this §335.475 adopted to be effective January 3, 1992, 16 TexReg 7532.

Cross References: This Section cited in 30 TAC §335.474, (relating to Source Reduction and Waste Minimization Plans); 30 TAC §335.476, (relating to Reports and Recordkeeping).

§ 335.476. Reports and Recordkeeping

All persons required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission, concurrent with implementation of the plan under §335.475 of this title (relating to Implementation Dates), an initial executive summary of such plan and a copy of the certification of completeness and correctness in §335.474(1)(H) of this title (relating to Source Reduction and Waste Minimization Plans). Within 30 days of any revision of such plan, a revised executive summary including a copy of a new certificate of completeness and correctness shall be submitted. All owners and operators required to develop a plan under §335.473(1) and (3) of this title (relating to Applicability) shall also submit an annual report as defined in paragraphs (1), (2), and (3) of this section according to the schedule outlined in paragraph (4) of this section. Persons required to develop a source reduction and waste minimization plan for a facility under §335.473(2) of this title (relating to Applicability) may meet the annual reporting requirements by submitting their annual waste summary required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) and by submitting their hazardous waste reduction goals as required under §335.474(3)(K)(ii) of this title (relating to Source Reduction and Waste Minimization Plans).

(1) The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(A) an assessment of the progress toward the achievement of the facility source reduction goal and the facility waste minimization goal;

(B) a statement to include, for facilities described in §335.473(1) of this title (relating to Applicability), the amount of hazardous waste generated and, for facilities described in §335.473(3), the amount of the release of reportable pollutants or contaminants designated under the Texas Solid Waste Disposal Act, the Health and Safety Code, §361.433(c), in the year preceding the report, and a comparison of those amounts with the amounts generated or released using 1987 as the base year;

(C) any modification to the plan.

(2) The report may include:

(A) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(B) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(C) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(D) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(3) The report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(4) The report and the executive summary of the plan shall be submitted according to the following schedule and annually thereafter.

(A) For all facilities meeting the specifications of §335.475(1) of this title (relating to Implementation Dates), the first report will be due on or before March 1, 1994. The report will cover calendar year 1993. Subsequent an-

~~nual reports will be submitted on or before~~ July 1 of each year.

(B) For all facilities meeting the specifications of §335.475(2), the first report will be due on or before July 1, 1995. The report will cover calendar year 1994.

(C) For all facilities meeting the specifications of §335.475(3), the first report will be due on or before July 1, 1996. The report will cover calendar year 1995.

(D) For all facilities meeting the specifications of §335.475(4), the first report will be due on or before July 1, 1997. The report will cover calendar year 1996.

(E) For all facilities meeting the specifications of §335.475(5), the first report will be due on or before July 1, 1998. The report will cover calendar year 1997.

(5) Base line data from the calendar year 1987 shall be used in developing each of the first reports referred to in paragraph (4) of this section.

(6) The report shall be submitted on forms furnished or approved by the executive directors of the commission and the board and shall contain at a minimum the information specified in paragraph (1) of this section. Upon written request by the facility, the executive directors may authorize a modification in the reporting period.

Source: The provisions of this §335.476 adopted to be effective January 3, 1992, 16 TexReg 7532; amended to be effective July 11, 1995, 20 TexReg 4635; amended to be effective December 25, 1995, 20 TexReg 10374.

§ 335.477. Exemptions

(a) This subchapter does not apply to:

(1) conditionally exempt small quantity generators; and

(2) facilities regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101 or §141.012.

(b) Owners and operators of facilities listed in §335.473 of this title (relating to Applicability) may apply on a case-by-case basis to the executive directors of the commission and the board for an exemption from this subchapter. The executive directors of the commission and board may grant an exemption if the applicant demonstrates that sufficient reductions have been achieved. If an exemption is granted, it is valid only for the following year, but can be renewed, on an annual basis, by ~~filing a new application. The executive directors'~~ ~~decision will be based upon the following stan~~dards and criteria for determining practical economic and technical completion of the plan:

(1) the facility has reduced the amount of pollutants and contaminants being generated or released by 90% since the base year;

(2) potential impact on human health and the environment of any remaining hazardous waste generated, or pollutant or contaminant released; and

(3) a demonstration that additional reductions are not economically and technically feasible.

Source: The provisions of this §335.477 adopted to be effective January 3, 1992, 16 TexReg 7532.

Cross References: This Section cited in 30 TAC §335.475, (relating to Implementation Dates).

§ 335.478. Administrative Completeness

The commission or the board may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter.

Source: The provisions of this §335.478 adopted to be effective January 3, 1992, 16 TexReg 7532.

§ 335.479. Enforcement

Failure to have a source reduction and waste minimization plan in accordance with this subchapter or failure to submit a source reduction and waste minimization annual report in accordance with this subchapter is a violation.

Source: The provisions of this §335.479 adopted to be effective January 3, 1992, 16 TexReg 7532.

§ 335.480. Confidentiality

(a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person and/or generator who is subject to this subchapter and shall be available to commission or board personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of Chapter 424, Acts of the 63rd Legislature, 1973 (Texas Civil Statutes, Article 6252-17a).

(b) The executive summary of the plan and the annual report are public records. On request, the person and/or generator shall make available to the public a copy of the executive summary of the plan or annual report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan ~~has been prepared shows to the satisfaction of the~~

~~commission or board that an executive summary of~~ the plan, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the commission or board shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the commission or board or an employee of the commission or board does not affect its status as a trade secret.

(e) Information classified by the commission or board as confidential under this section is not a public record for purposes of Chapter 424, Acts of the 63rd Legislature, 1973 (Texas Civil Statutes, Article 6252-17a), and may not be used in a public hearing or disclosed to a person outside the commission or board unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

Source: The provisions of this §335.480 adopted to be effective ~~January 3, 1992, 16 TexReg 7532.~~

SUBCHAPTER R. WASTE CLASSIFICATION

Authority: The provisions of this Subchapter R issued under the Texas Water Code, §5.103 and §26.011; and the Texas Solid Waste Disposal Act, §361.017.

Cross References: This Subchapter cited in 30 TAC §335.62, (relating to Hazardous Waste Determination and Waste Classification).

~~§ 335.501. Purpose, Scope, and Applicability~~

Persons who generate industrial solid waste or municipal hazardous waste shall comply with the provisions of this subchapter. Wastes that are regulated under Chapter 334, Subchapter K of this title (relating to Storage, Treatment and Reuse Procedures for Petroleum-Substance Contaminated Soil) are not subject to the provisions of this subchapter. Persons who generate wastes in Texas shall classify their own waste according to the standards set forth in this subchapter and may do so without any prior approval or communication with the commission other than notification of waste generation activities pursuant to §335.6 of this title (relating to Notification Requirements) and submittal of required documentation pursuant to §335.513 of this title (relating to Documentation Required). A generator of industrial solid waste or special waste as defined by §330.2 of this title ~~(relating to Definitions) shall refer to Chapter 330 of this title (relating to Municipal Solid Waste)~~ for regulations regarding the disposal of such waste prior to shipment to a municipal landfill. This subchapter will:

(1) provide a procedure and time schedule for implementation of a new Texas waste notification system;

(2) establish standards for classification of industrial solid waste and municipal hazardous waste managed in Texas;

(3) after June 7, 1995, apply to all classifications involving new waste streams and existing unclassified waste streams; and

(4) on January 1, 1996, require the completion of all existing waste stream notifications in accordance with the classification requirements of this subchapter.

Source: The provisions of this §335.501 adopted to be effective November 27, 1992, 17 TexReg 8010; amended to be effective February 24, 1994, 19 TexReg 1042; amended to be effective May 30, 1995, 20 TexReg 3722.

Cross References: This Section cited in 30 TAC §335.503, (relating to Waste Classification and Waste Coding Required).

§ 335.502. Conversion to New Waste Notification and Classification System

(a) These rules relating to waste classification are effective as outlined below. The rules shall be implemented as defined in subsections (b)-(g) of this section, which are summarized as follows.

(1) January 1, 1993—On and after this date all waste classifications involving new waste streams and existing unclassified waste streams shall be classified and coded according to the requirements of this subchapter.

(2) July 1, 1994—This is the completion deadline for updating all hazardous and nonhazardous waste stream notifications.

(3) October 1, 1994—This date is the deadline for the commission to provide notice in Texas Register concerning final implementation of rules.

(4) January 1, 1995—The rules shall be fully implemented on or before this date. All waste must be managed according to the classification assigned under this subchapter.

(b) Waste notification information as required under §335.6 of this title (relating to Notification Requirements) and waste codes required under §335.10(b) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary ~~Exporters of Hazardous Waste) shall be assigned~~

by the generator and provided to the commission as provided by this chapter.

(1) All waste notification information provided to the commission in accordance with the schedule set forth in this subchapter shall be provided in a format defined by the commission.

(2) All existing waste notification information on file with the commission shall be updated to the new format by the generator no later than July 1, 1994.

(3) All waste notification information may be submitted on paper or by electronic data transmission.

(4) Forms and format information for submitting notice of registration information on paper or by electronic means may be obtained by contacting the commission at the address listed in Appendix 2 of this subchapter.

(c) All industrial solid waste and municipal hazardous waste managed in the state shall be classified by the generator according to the provisions of this subchapter.

(1) After January 1, 1993, all new waste streams and waste streams not previously classified shall be classified and managed pursuant to the provisions of this subchapter.

(2) All generators that have existing waste streams classified as Class 1, Class 2, or Class 3 under any previous system are required to re-evaluate the waste under the provisions of this subchapter and to submit the updated information to the commission pursuant to subsection (b) of this section. However, generators of waste classified under a previous waste classification system may continue to manage and dispose of that waste under the existing classification until the effective management date provided in subsection (d) of this section. If a generator chooses to continue to manage waste under a previous waste classification system the existing waste code shall be used when shipping, storing, disposing, or otherwise managing the waste. The generator shall use the new waste code when the waste is to be managed under the new classification designation. Once a waste is reclassified and the waste is managed based on the new classification and using the new waste code, the generator may not return to managing the waste under the old classification system.

(d) The effective date for management of all wastes under this chapter is January 1, 1995. On and after this date, all solid waste generated or otherwise handled in the state shall be classified and accordingly managed pursuant to this subchapter. This effective date may be revised by subsection (e) of this section.

(e) Not later than October 1, 1994, the commission shall assess the impact of the implementation of this subchapter. The commission shall evaluate waste capacity issues, costs to the regulated community and the state, personnel and staffing levels of the commission, and review the applicability of the rules themselves. The commission may use information from any source necessary to assess the impact. Based on this evaluation, by October 1, 1994, the commission shall give public notice in the Texas Register that either:

(1) these waste classification requirements take full force and effect on January 1, 1995; or

(2) implementation of these waste classification requirements shall be delayed. If implementation is delayed, the commission shall provide a revised implementation date and give additional information as necessary to guide the regulated community until the revised effective date.

(f) If the commission fails to give public notice in the Texas Register as required in subsection (e) of this section, this subchapter takes full force and effect on January 1, 1995.

(g) After the effective management date as provided in subsection (d) of this section, future reclassification of a waste may be required because of changes in classification criteria. A generator whose waste stream is reclassified to a more stringent waste classification after the effective management date of this subchapter as provided in subsection (d) of this section must reclassify the waste and begin managing the waste according to the more stringent classification requirements according to the following schedule:

(1) if mandated by a federal or state law, as specified in that law;

(2) if a date is provided in the adoption of the amendment, as required in that rule adoption;

(3) if not otherwise specified, within 180 days of the effective date of the rule amendment adopting the new classification criteria;

(4) in situations where a compliance date creates an unusual hardship a generator may request a different implementation time under the variance provisions of §335.514 of this title (relating to Variance from Waste Classification Provisions).

~~Source: The provisions of this §335.502 adopted to be effective~~ November 27, 1992, 17 TexReg 8010; amended to be effective February 24, 1994, 19 TexReg 1042.

Cross References: This Section cited in 30 TAC §335.514, (relating to Variance from Waste Classification Provisions).

§ 335.503. Waste Classification and Waste Coding Required

(a) All industrial solid and municipal hazardous waste generated, stored, processed, transported, or disposed of in the state shall be classified according to the provisions of this subchapter.

(1) All solid waste shall be classified at the point of generation of the waste. A generator may not dilute a waste to avoid a Class 1 classification; however, combining waste streams for subsequent legitimate processing, storage, or disposal does not constitute dilution and is acceptable. Wastes shall be classified prior to, and following any type of processing or mixing of the waste.

(2) All industrial solid and municipal hazardous waste shall be classified as either:

(A) hazardous;

(B) Class 1;

(C) Class 2; or

(D) Class 3.

(3) A person who generates a solid waste shall first determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination).

(4) After making the hazardous waste determination as required in paragraph (3) of this subsection, if the waste is determined to be nonhazardous, the generator shall then classify the waste as Class 1, Class 2, or Class 3, pursuant to §§335.505-335.507 of this title (relating to Class 1 Waste Determination, Class 2 Waste Determination, and Class 3 Waste Determination) using one or more of the following methods:

(A) use the criteria for waste classification as provided in §§335.505-335.507 of this title (relating to Class 1 Waste Determination, Class 2 Waste Determination, and Class 3 Waste Determination);

(B) use process knowledge as provided in §335.511 of this title (relating to Use of Process Knowledge);

(C) classify the waste as directed under §335.508 of this title (relating to Classification of Specific Industrial Wastes); or

(D) choose to classify a nonhazardous waste ~~as Class 1 without any analysis to support that classification. However, documentation~~ (analytical data and/or process knowledge) is necessary to classify a waste as Class 2 or Class 3, pursuant to §335.513 of this title (relating to Documentation Required).

(b) As required under the schedule provided in §335.501 of this title (relating to Conversion to New Waste Notification and Classification System), all industrial solid waste and municipal hazardous waste generated, stored, processed, transported or disposed of in the state shall be coded with an eight-digit waste code number which shall include a four-digit waste sequence number, a three-digit form code, and a one-character classification (either H, 1, 2, or 3). Form codes are provided in §335.521(c) of this title (relating to Appendix 3). Procedures for assigning waste code numbers and sequence numbers are outlined as follows and available from the commission at the address listed in §335.521(b) of this title (relating to Appendix 2).

(1) A waste code is represented by the following eight-digit character string: sequence number + form code + classification code (H, 1, 2, or 3).

(2) In-state generators will assign a unique four-digit sequence number to each individual waste. These sequence numbers will range from 0001 to 9999. They need not be assigned in sequential order. An in-state registered generator may choose to request the commission assign a sequence number to a specific waste which is not regularly generated by a facility and is being shipped as a one-time shipment rather than adding that waste to the regular sequence numbers on a notice of registration. Sequence numbers provided by the commission may be a combination of alpha and numeric characters.

(3) In-state unregistered generators will be provided a four-digit sequence number by the commission for each regulated waste it generates. Sequence numbers provided by the commission may be a combination of alpha and numeric characters.

(4) Generators of wastes resulting from a spill may obtain a sequence number for the spill related wastes from the commission's Emergency Response Section.

(5) Out-of-state generators will use the sequence code "OUTS" in the first four digits of the waste code.

(6) CESQGs or industrial Class 1 non-hazardous waste generators that are exempt from manifesting as specified in §335.10 of this title (re-

~~lating to Shipping and Reporting Procedures~~ Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) who voluntarily manifest their hazardous and or Class 1 nonhazardous waste may use "CESQ" as the first four digits of the waste code.

(7) A facility which receives and consolidates like waste from Municipal Conditionally Exempt Small Quantity Generators should use "CESQ" in the first four positions of the waste code for any manifesting and/or reporting associated with that waste.

(8) A facility which receives a waste and consolidates that waste with other like waste, other than its own, (thus not changing the form code of the waste stream or its composition, hazardous, or Texas waste class), or stores a waste without treating, processing (as defined in §335.1 of this title (relating to Definitions)), or changing the form or composition of that waste may ship that waste to a storage, treatment, or disposal facility using the sequence code "TSDF" in the first four positions of the waste code. This does not pertain to wastes which are treated or altered or combined with unlike wastes. This "TSDF" designation is only to be used by facilities that store and/or accumulate a quantity of wastes from more than one site for subsequent shipment to a treatment or disposal facility. Manifest documents must note a final destination designated to receive a consolidated waste. The designated "final destination" receiving facility noted on the manifest must be a permitted facility in order to terminate the manifest, unless the waste is nonhazardous and does not require manifesting in accordance with §335.10(g) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and is going to a facility described in §335.10(g) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). A consolidated waste shipped to a non-permitted facility prior to being shipped to the final destination must proceed with the original manifests (noted with any appropriate changes) to the facility designated on the manifest for final handling.

~~Source: The provisions of this §335.503 adopted to be effective November 27, 1992, 17 TexReg 8010; amended to be effective February 24, 1994, 19 TexReg 1042; amended to be effective April 24, 1995, 20 TexReg 2709; amended to be effective May 30, 1995, 20 TexReg 3712; amended to be effective March 1, 1996, 21 TexReg 1425.~~

~~Cross References: This Section cited in 30 TAC §335.6, (relating to Notification Requirements).~~

§ 335.504. Hazardous Waste Determination

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded from being a solid waste or hazardous waste per 40 Code of Federal Regulations §§261.2, 261.3, or 261.4.

(2) If your material is a waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart D.

(3) For purposes of complying with 40 CFR Part 268 or if the waste is not listed as a hazardous waste in 40 CFR Part 261, Subpart D, he or she must then determine whether the waste exhibits any characteristics of a hazardous waste as is identified in 40 CFR Part 261, Subpart C, by either:

(A) Testing the waste according to methods set forth in 40 CFR Part 261, Subpart C, or according to an equivalent method approved by the administrator under 40 CFR §260.21; or

(B) Applying knowledge of the hazardous characteristic of the waste in light of the materials and/or process used to generate the waste, pursuant to §335.511 of this title (relating to Use of Process Knowledge).

(4) For purposes of complying with Chapter 324 of this title (relating to Used Oil), if the waste is a used oil, determine whether used oil is a listed hazardous waste per 40 Code of Federal Regulations §261.3(a)(2)(v). Used oil made hazardous by mixing with listed or characteristically hazardous waste is regulated as hazardous waste under this chapter. Other used oil that is to be recycled is managed per Chapter 324 of this title.

Source: The provisions of this §335.504 adopted to be effective November 27, 1992, 17 TexReg 8010; amended to be effective November 23, 1993, 18 TexReg 8218; amended to be effective March 6, 1996, 21 TexReg 2400.

Cross References: This Section cited in 30 TAC §335.62, (relating to Hazardous Waste Determination and Waste Classification); 30 TAC §335.503, (relating to Waste Classification and Waste Coding Required); 30 TAC §335.505, (relating to Class 1 Waste Determination); 30 TAC §335.506, (relating to Class 2 Waste Determination); 30 TAC §335.507, (relating to Class 3 Waste Determination); 30 TAC §335.511, (relating to Use of Process Knowledge).