

US EPA ARCHIVE DOCUMENT

**EPA-APPROVED TEXAS
STATUTORY AND REGULATORY
REQUIREMENTS APPLICABLE TO THE
HAZARDOUS WASTE MANAGEMENT
PROGRAM**

Part 2 of 4

EPA-Approved Texas Hazardous Waste Regulatory Requirements:

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December 31, 2001

June 2005

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This Binder contains the following sets of regulations:

- A. Texas Administrative Code, (TAC), Title 30, Environmental Quality, 2002, as amended, effective through December 31, 2001.
- B. Texas Administrative Code, (TAC), Title 30, Environmental Quality, 2000, as amended, effective through December 31, 1999.
- C. Texas Administrative Code, (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997.
- D. Texas Administrative Code, (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994.

Please note the following:

- (1) The 2002 TAC, Title 30 is the most recent version of the Texas authorized hazardous waste regulations. For a few provisions, the authorized version is found in the TAC, Title 30, Environmental Quality dated January 1, 1994, January 1, 1997, or December 31, 1999. Texas made subsequent changes to these provisions but these changes have not been authorized by EPA. The provisions from earlier sets of regulations are noted in the table below.
- (2) Certain provisions found in the official regulations in this Binder include amendments that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. EPA will enforce the State regulations that are actually authorized by EPA. In the Table below, provisions with unauthorized amendments are presented in italics. The actual State regulatory text authorized by EPA (i.e., without the unauthorized amendments) is available as a separate document, *Addendum to the EPA-Approved Texas Regulatory Requirements Applicable to the Hazardous Waste Management Program, June 2005*. This document is available from EPA Region 6, EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202, Phone number: (214) 665-6444.

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335.168 through 335.178	“Design and Operating Requirements (Surface Impoundments)” through “Cost estimate for closure”.	2678-2687
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335.203	Site selection to protect groundwater or surface water.	2691
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**EPA APPROVED TEXAS REGULATORY REQUIREMENTS
APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM *
June 2005**

Texas Administrative Code (TAC), Title 30, Environmental Quality, 2002, as amended, effective through December 31, 2001 unless otherwise specified		
State Citation	Description	Page
335.204(a)(1)-(5) <i>(See 335.204(a)(1), effective 5/28/86, in the Addendum to the EPA Binder)</i>	Unsuitable site characteristics: storage or processing facilities, excluding storage surface impoundments. <i>335.204(a)(1) includes amendments not authorized by EPA. See page 7 of the Addendum to the EPA Binder (335.204(a)(1) effective 5/28/86) for the wording of the authorized version of this provision.</i>	2691-2692
335.204(b)(1)-(6) <i>See 335.204(b)(1) and (6), effective 5/28/86, in the Addendum to the EPA Binder)</i>	Unsuitable site characteristics: land treatment facilities. <i>335.204(b)(1) and (6) includes amendments not authorized by EPA. See page 8 of the Addendum to the EPA Binder (335.204(b)(1) and (6) effective 5/28/86) for the wording of the authorized version of this provision.</i>	2692-2693
335.204(c)(1)-(5) <i>See 335.204(c)(1), effective 5/28/86, in the Addendum to the EPA Binder)</i>	Unsuitable site characteristics: waste piles. <i>335.204(c)(1) includes amendments not authorized by EPA. See page 8 of the Addendum to the EPA Binder (335.204(c)(1) effective 5/28/86) for the wording of the authorized version of this provision.</i>	2693-2694
335.204(d)(1)-(5) <i>See 335.204(d)(1), effective 5/28/86, in the Addendum to the EPA Binder)</i>	Unsuitable site characteristics: storage surface impoundments. <i>335.204(d)(1) includes amendments not authorized by EPA. See page 9 of the Addendum to the EPA Binder (335.204(d)(1) effective 5/28/86) for the wording of the authorized version of this provision.</i>	2694-2695
335.204(e) introductory paragraph	Unsuitable site characteristics: landfills.	2695

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State Citation	Description	Page
335.204(e)(1) introductory paragraph (except the phrase "Except as. . . (B) of this paragraph," and the word "event" at the end of the paragraph)	Unsuitable site characteristics: landfills.	2695
335.204(e)(2) - (7) <i>See 335.204(e)(6), effective 5/28/86, in the Addendum to the EPA Binder)</i>	Unsuitable site characteristics: landfills. <i>335.204(e)(6) includes amendments not authorized by EPA. See page 9 of the Addendum to the EPA Binder (335.204(e)(6) effective 5/28/86) for the wording of the authorized version of this provision.</i>	2696
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**EPA APPROVED TEXAS REGULATORY REQUIREMENTS
APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM ***
June 2005

Texas Administrative Code (TAC), Title 30, Environmental Quality, 2002, as amended, effective through December 31, 2001 unless otherwise specified		
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335.261(except (e))	Universal Waste	2707-2709
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(December 31, 1999)	See page 2726 of 30 TAC, as amended December 31, 1999 for the authorized provision.	

Texas Administrative Code

Title 30 Environmental Quality

2002—Part One

[Replaces 2001 Pamphlet]

Amendments effective through
December 31, 2001



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OCCUPATIONAL LICENSES AND REGISTRATIONS

~~§ 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 days' 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 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

Section

- 30.1. Authority.
- 30.3. Purpose and Applicability.
- 30.5. General Provisions.
- 30.7. Definitions.
- 30.10. Administration.
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- 30.18. Applications for an Initial License.
- 30.20. Examinations.

Section

- 30.24. License and Registration Applications for Renewal.
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- 30.35. Hearings.

SUBCHAPTER B. BACKFLOW PREVENTION ASSEMBLY TESTERS

- 30.51. Purpose and Applicability.
- 30.57. Definitions.

EMERGENCY AND TEMPORARY ORDERS AND PERMITS

30 TAC § 35.502

~~duration than required to prevent the hazard. The injection authorized may not result in the movement of fluids into underground sources of drinking water.~~

(e) Public notice shall accompany the emergency order, 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 order may be given at the same time as public notice and opportunity for comment on the order, and the two notices may be combined. 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 order).

Source: The provisions of this §35.402 adopted to be effective December 10, 1998, 23 TexReg 12413.

~~SUBCHAPTER H. RADIOACTIVE
SUBSTANCES AND MATERIALS
EMERGENCY~~

§ 35.501. Emergency Orders Relating to Radioactive Substances

(a) When an emergency exists as a result of a matter under the commission's jurisdiction that requires immediate action to protect the public health or safety or the environment, the commission or executive director may issue an emergency order under Texas Water Code, §5.516, and Texas Health and Safety Code, §401.056.

(b) The commission or executive director may issue an emergency order directing any action or corrective measure needed to correct or remove the threat to public health or safety or the environment when the commission or executive director determines that radioactive substances under its jurisdiction threatens the public health or safety or the environment and that the licensee managing the radioactive substances is unable to remove the threat.

(c) An emergency order issued under this section takes effect immediately. A person to whom an emergency order is directed shall comply immediately with that order.

(d) The emergency order shall be delivered to the person to whom the order is directed by hand delivery or by certified mail, return receipt requested.

~~Affidavit of personal service, proof of mailing to the proper address, or the receipt shall be conclusive evidence of service.~~

(e) If the commission or executive director issues the emergency order without notice or hearing, the commission shall provide the person to whom the order is directed an opportunity for a hearing on written request within 30 days of the date of the order. If a hearing is requested, notice of the hearing shall be given to the person to whom the order is directed by hand delivery or certified mail, return receipt requested, at least ten days before the hearing. A requested hearing shall be held not earlier than the 11th day and not later than the 20th day following the date of receipt of the hearing request.

(f) All provisions of the emergency order shall remain in full force and effect during the pendency of a hearing, unless otherwise altered by the commission. At the conclusion of the hearing and after the proposal for decision is made, the commission shall make a determination to affirm, modify, or revoke the emergency order and may modify, revoke, or suspend the license based on the determination made.

(g) The commission shall use the financial assurance mechanism provided by a licensee to pay the costs of actions and corrective measures that are taken or that are to be taken under this section. The commission shall use this financial assurance mechanism under the procedure set out in Texas Health and Safety Code, Chapter 401.

(h) If the costs of actions and corrective measures require more funds than the financial assurance mechanism has provided, the commission shall request the attorney general to seek reimbursement from the licensee or person causing the threat.

(i) The commission shall seek reimbursement through a commission order or shall request the attorney general to file suit for reimbursement if the commission uses the funds provided by the licensee for security under Texas Health and Safety Code, Chapter 401, to pay for actions or corrective measures to remedy spills or contamination by radioactive material resulting from a violation of the Texas Radiation Control Act (TRCA), the rules of this chapter, or a license or order issued by the commission under the TRCA or this chapter.

Source: The provisions of this §35.501 adopted to be effective December 10, 1998, 23 TexReg 12413.

§ 35.502. Emergency Impoundment of Radioactive Material

(a) In the event of an emergency, the commission or the executive director shall have the authority to

30 TAC § 39.3**NATURAL RESOURCE CONSERVATION COMMISSION****§ 39.3. Purpose**

This chapter specifies notice requirements for applications, hearings on applications, and hearings on contested enforcement cases, including requirements derived from statutes.

~~Source: The provisions of this §39.3 adopted to be effective January 8, 1997, 21 TexReg 12550.~~

§ 39.5. General Provisions

~~(a) If the chief clerk prepares a newspaper notice that is required by this chapter and the applicant does not cause the notice to be published within 30 days of receipt of the notice from the chief clerk, the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication within 30 days of publication.~~

(b) The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) When this chapter requires notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Unless otherwise provided in this chapter, public notice requirements apply to applications for initial permits or applications for the amendment, modification, or renewal of permits.

(e) If an applicant submits more than one application for a facility, notice may be combined to satisfy more than one section of this chapter.

(f) When this chapter requires an applicant to publish notice, the applicant must file an affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file the affidavit is the day of the public meeting for notice of public meeting, two days before a public hearing for notice of a public hearing, and 30 days after the last publication for other published notices. For notice of a public meeting, the applicant must also submit the affidavit to the executive director no later than the day of the public meeting. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice.

(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice 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. 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. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a newspaper of the largest 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, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements.

~~(h) When this chapter requires notice be broadcast according to this subsection, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.~~

~~Source: The provisions of this §39.5 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective June 5, 1997, 22 TexReg 4578; amended to be effective December 10, 1998, 23 TexReg 12426; amended to be effective June 17, 1999, 24 TexReg 4426; amended to be effective September 14, 2000, 25 TexReg 8857~~

§ 39.7. Mailing Lists

The chief clerk shall maintain mailing lists of persons requesting public notice of certain applications. Persons, including participants in past commission permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to remain on the list, and may delete from the list the name of any person who fails to respond to such request.

~~Source: The provisions of this §39.7 adopted to be effective January 8, 1997, 21 TexReg 12550.~~

§ 39.9. Deadline for Public Comment and Hearing Requests

Notice under this chapter will specify a deadline to file public comment and if applicable, hearing requests. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications).

~~Source: The provisions of this §39.9 adopted to be effective January 8, 1997, 21 TexReg 12550.~~

PUBLIC NOTICE

§ 39.11. Text of Public Notice

When notice by publication or by mail is required by this chapter, the text of the notice must include:

- (1) the name and address of the agency;
- (2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;
- (3) a brief description of the business conducted at the facility or activity described in the application or the draft permit;
- (4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;
- (5) a brief description of public comment procedures, and the time and place of any public meeting or public hearing;
- (6) a statement of procedures by which the public may participate in the final permit decision and, if applicable, how to request a hearing, or a statement that later notice will describe procedures for public participation;
- (7) for notices of public meetings or hearings, the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures;
- (8) the application or permit number;
- (9) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless there is a (if applicable) request for hearing filed with the chief clerk;
- (10) if applicable, the deadline to file comments and, if applicable, hearing requests;
- (11) a statement of whether the executive director has prepared a draft permit; and
- (12) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies.

Source: The provisions of this §39.11 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective June 5, 1997, 22 TexReg 4578; amended to be effective September 14, 2000, 25 TexReg 8857

§ 39.13. Mailed Notice

When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

- (1) the landowners named on the application map or supplemental map, or the sheet attached to the

30 TAC § 39.15

~~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 or will be 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) if applicable, local, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c), as amended and adopted in the CFR through May 2, 1989, at 54 FedReg 18786;
- (8) if applicable, persons on a mailing list developed and maintained in accordance with 40 Code of Federal Regulations, §124.10(c)(1)(ix);
- (9) the applicant;
- (10) if the application concerns an injection well, the Water Well Drillers Advisory Council;
- (11) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists);
- (12) any other person the executive director or chief clerk may elect to include;
- (13) if applicable, the secretary of the Coastal Coordination Council; and
- (14) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests.

Source: The provisions of this §39.13 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective June 5, 1997, 22 TexReg 4578; amended to be effective August 8, 1999, 24 TexReg 5872; amended to be effective September 14, 2000, 25 TexReg 8857

§ 39.15. Public Notice Not Required for Certain Types of Applications

- (a) Public notice is not required for the following:
 - (1) applications for the correction or endorsement of permits under §305.65 of this title (relating to Corrections of Permits);
 - (2) permittees' voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);
 - (3) applications for transportation route special permits under §330.32 of this title (relating to Collection and Transportation Requirements).
- (b) For the voluntary transfer of permits, no public notice shall be required, except that:

30 TAC § 39.101

NATURAL RESOURCE CONSERVATION COMMISSION

~~(f) Notice of hearing.~~

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.5(g) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file an affidavit certifying compliance with this paragraph with the chief clerk. Filing an affidavit certifying facts that constitute compliance with the notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes an amendment of a permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) Notice under paragraphs (2) and (3)(B) of this subsection shall be completed at least 30 days before the hearing.

Source: The provisions of this §39.101 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective September 23, 1999, 24 TexReg 8190.

§ 39.103. Application for Industrial or Hazardous Waste Facility Permit

~~(a) Preapplication requirements.~~

(1) If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality. Mailed notice shall be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission

~~in a paper of general circulation in the county in which the facility is to be located.~~

(2) The requirements of this paragraph are set forth at 40 CFR §124.31(b)-(d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(b) Notice of receipt of application. When the executive director receives an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 Code of Federal Regulations (CFR) §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417. The requirements of this paragraph relating to 40

PUBLIC NOTICE

CFR §124.32(b)-(c) do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

~~▲(c) Review of permit application by other governmental agencies. After the executive director determines that the application is administratively complete, the executive director shall mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.~~

(d) Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under ~~§39.5(h) of this title (relating to General Provisions).~~

(4) The notice shall specify the deadline to file public comment or hearing requests. For industrial solid waste applications, the deadline shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

~~(e) Notice of public meeting.~~

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk ~~concerning the application before the deadline to~~

30 TAC § 39.103

~~file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided under this subsection.~~

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting. The applicant shall publish notice under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns an industrial solid waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to

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~~the persons listed in §39.13 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.~~

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under §39.5(h) of this title.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection shall be completed at least 30 days ~~before the hearing.~~

(g) Information repository. The requirements of 40 Code of Federal Regulations (CFR) §124.33(b)-(f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, apply to all applications for hazardous waste permits.

~~(h) This section does not apply to applications for an injection well permit.~~

Source: The provisions of this §39.103 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective August 8, 1999, 24 TexReg 5872

~~§ 39.105. Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit~~

(a) Notice requirements for Class 1 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits.

(b) The text of required notice shall follow the requirements of §39.11 of this title (relating to Text of Public Notice) and the additional requirements in §305.69 of this title.

(c) When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(d) The effective date of the amendment of existing §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit) and this new §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste

Permit or Registration) is June 3, 2002. Applications for modifications filed before this amended section and new §39.106 of this title become effective, will be subject to this section as it existed prior to June 3, 2002.

Source: The provisions of this §39.105 adopted to be effective January 8, 1997, 21 TexReg 12550; amended to be effective December 30, 2001, 26 TexReg 10989.

§ 39.106. Application for Modification of a Municipal Solid Waste Permit or Registration

(a) When mailed notice is required under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), the mailed notice shall be mailed by the permit or registration holder and the text of the notice shall comply with §39.411(b)(1)-(3), (6), (7), (9), and (12) of this title (relating to Text of Public Notice), and shall provide the location and phone number of the appropriate regional office of the commission to be contacted for information on the location where a copy of the application is available for review and copying.

(b) When mailed notice is required by §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), notice shall be mailed by the permit or registration holder to the persons listed in §39.413 of this title (relating to Mailed Notice).

(c) The effective date of the amendment of existing §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit) and this new §39.106 is June 3, 2002. Applications for modifications filed before amended §39.105 of this title and this new §39.106 become effective, will be subject to §39.105 of this title as it existed prior to June 3, 2002.

Source: The provisions of this §39.106 adopted to be effective December 30, 2001, 26 TexReg 10989.

§ 39.107. Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit

The notice requirements for Class 2 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), except that the text of notice shall comply with §305.69 of this title and §39.11 of this title (relating to Text of Public Notice). The notice shall specify the deadline to file with the chief clerk public comment. The deadline is specified in §305.69 of this title. When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title

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~~Control (UIC) Permit Modifications at the Request of the Permittee;~~

(13) applications for minor modifications of Texas Pollutant Discharge Elimination System (TPDES) permits under §305.62(c)(3) of this title; or

(14) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice).

(d) Applications for initial issuance of voluntary emission reduction permits under Texas Health and Safety Code, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Voluntary Emission Reduction Permits), except that any reference to requests for reconsideration or contested case hearings in §39.409 of this title or §39.411 of this title shall not apply.

(e) Applications for Radioactive Materials Licenses under Chapter 336 of this title are not subject to §§39.405(c) and (e), 39.418, 39.419, 39.420, and certain portions of §39.413 of this title (relating to Mailed Notice).

Source: The provisions of this §39.403 adopted to be effective September 23, 1999, 24 TexReg 8190; amended to be effective December 30, 2001, 26 TexReg 10989.

§ 39.405. General Notice Provisions

~~—(a) Failure to Publish Notice. If the chief clerk prepares a newspaper notice that is required by Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) or Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for~~

~~Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur:~~

(1) the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication; or

(2) the executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it shall be exempt from any application fee requirements.

(b) Electronic Mailing Lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or Hand Delivery. When Subchapters H-L of this chapter or Subchapter G of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined Notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and Affidavit. When Subchapters H-L of this chapter or Subchapter G of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is 10 business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

~~(f) Published Notice. When this chapter requires notice to be published under this subsection:~~

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which

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the facility is located or proposed to be located, except for air applications required to publish in a newspaper of general circulation in a municipality under §39.603 of this title (relating to Newspaper Notice); and

~~(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. 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. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county.~~

(g) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant is required to indicate in the public file that there is additional information in a confidential file. The copy of the application shall comply with the following:

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the publications' designated comment period; and

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to SOAH.

Source: The provisions of this §39.405 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.407. Mailing Lists

The chief clerk shall maintain mailing lists of persons requesting notice of an application. Persons, including participants in past agency permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to remain on the list, and may delete from the list the name of any person who fails to respond to such request.

30 TAC § 39.411

Source: The provisions of this §39.407 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.409. Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing

Notice given under this chapter will specify any applicable deadline to file public comment specified under §55.152 of this title (relating to Public Comment) and, if applicable, any deadlines to file requests for reconsideration, contested case hearing, or notice and comment hearing. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

Source: The provisions of this §39.409 adopted to be effective September 23, 1999, 24 TexReg 8190

§ 39.411. Text of Public Notice

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H-L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Mailed Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

~~(B) a statement in the notice for any permit application for which there is an opportunity for a~~

30 TAC § 39.411

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~~contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted.~~

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

~~(10) for notices of air applications:~~

(A) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Control of Air Pollution from Toxic Materials, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(B) if notice is for applications described in §39.403(b)(11) or (12) of this title (relating to Applicability), a statement that any person is entitled to request a notice and comment hearing from the commission. If notice is for any other air application the following information which must be printed in a font style or size that clearly provides emphasis

and distinguishes it from the remainder of the notice:

(i) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission;

(ii) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(iii) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity; and

(iv) and that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a contested case hearing;

(D) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Natural Resource Conservation Commission;" and

(11) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(12) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

~~(13) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.~~

(14) for Class 3 modifications of hazardous industrial solid waste permits the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

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(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G-L of this chapter, the text of the notice must include the following information:

- (1) the information required by subsection (b)(1)-(12) of this section;
- (2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;
- (3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;
- (4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit; and
- (5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;
- (6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;
- (7) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

30 TAC § 39.413

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G-L of this chapter, the text of the notice must include the following information:

- (1) the information required by subsection (b)(1)-(3), (6)-(8), and (12) of this section;
- (2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures;
- (3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

Source: The provisions of this §39.411 adopted to be effective September 23, 1999, 24 TexReg 8190

~~§ 39.413. Mailed Notice~~

Unless otherwise specified in Subchapters I-M of this chapter (relating to Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses), when this chapter requires mailed notice, the chief clerk shall mail notice to:

- (1) the 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 or will be 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) if applicable, local, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c), as amended and adopted in the CFR through May 2, 1989 at 54 FedReg 18786;
- (8) if applicable, persons on a mailing list developed and maintained in accordance with 40 CFR §124.10(e)(1)(ix);

30 TAC § 39.503**NATURAL RESOURCE CONSERVATION COMMISSION**

~~proposing a significant change in facility operations.~~ For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendment), correction under §50.45 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417, and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995, at 60 FedReg 63417. The requirements of this paragraph relating to 40 CFR §124.32(b)-(c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.45 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

~~(A) notice shall be given as required by §39.418 of this title. Notice under §39.418 will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).~~

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in ~~which the facility is located.~~

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title shall be published once as required by §39.405(f)(2) of this title. In addition to the requirements of §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county which is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice shall comply with §39.411 of this title. The deadline for public comments on industrial solid waste applications shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

~~(e) Notice of public meeting.~~

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of

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30 TAC § 55.25

§ 55.25. Public Comment Processing

~~(a) The chief clerk shall deliver or mail to the executive director, the public interest counsel, the director of the Office of Public Assistance, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents timely filed with the chief clerk in response to public notice of an application.~~

~~(b) This subsection applies to applications concerning hazardous waste facilities, underground injection wells, or Texas Pollutant Discharge Elimination System (TPDES) permits. It applies to an application only when the commission has federal authorization to manage the permitting program under which the application is evaluated.~~

(1) Before an application is approved, the executive director shall prepare a response to all significant public comment on the draft permit raised during the public comment period. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes. The executive director shall make the response available to the public.

(A) If the application is acted on by the commission under §50.13 of this title (relating to Action on Application) or §55.27(a)(1) of this title (relating to Commission Action on Hearing Request), the executive director's response to public comment shall be made available to the public and filed with the chief clerk at least ten days before the commission acts on the application. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title (relating to Action by the Executive Director), the response to public comment should be made no later than the time of the executive director's action on the application.

(2) The executive director may call and conduct public meetings in response to public comment. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law. If a contested case hearing is held on the application, the public meeting shall be conducted as part of the preliminary hearing under §80.105 of this title (relating to Preliminary Hearings), unless the executive director specifies a different time and

place for the public meeting. If the executive director specifies a different time and place for the public meeting, then public comment shall not be taken at the preliminary hearing. This paragraph supersedes and controls any conflict between this paragraph and §80.105 of this title (relating to Preliminary Hearings). The public comment period shall automatically be extended to the close of any public meeting. Public notice of the meeting shall be given as required by commission rule. The applicant shall attend any public meeting held by the executive director. A tape recording or written transcript of the public meeting shall be made available to the public.

(3) Any person who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under this subsection, and failed to participate in the public hearing held under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.19 of this title (relating to Notice of Commission Action, Motion for Rehearing) or §55.27 of this title (relating to Commission Action on Hearing Request) or §80.271 of this title (relating to Motion for Rehearing) or may file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration) only to the extent of the changes from the draft permit to the final permit decision.

~~(c) This subsection applies to applications other than those under subsection (b) of this section. The commission may designate an agency office to process public comment under this subsection.~~

(1) The designated office may evaluate and respond to public comment, other than timely hearing requests, when appropriate.

(A) If the application and timely hearing requests are considered by the commission, the designated office should prepare any response to public comment no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk.

(B) If the application is approved by the executive director under Chapter 50, Subchapter C of this title, any response to public comment should be made no later than the time of the executive director's action on the application.

(2) The designated office shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is intended for the taking of public comment, and is

30 TAC § 55.150**NATURAL RESOURCE CONSERVATION COMMISSION**

~~Source: The provisions of this §55.150 adopted to be effective October 20, 1999, 24 TexReg 9015~~

§ 55.152. Public Comment Period

~~(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:~~

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air application not otherwise specified in this section;

(2) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or a concrete batch plant exemption from permitting or permit by rule under Chapter 106 of this title (relating to Exemptions from Permitting);

(3) 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(4) 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(5) the time specified in commission rules for other specific types of applications; or

(6) as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended to the close of any public meeting.

Source: The provisions of this §55.152 adopted to be effective October 20, 1999, 24 TexReg 9015

§ 55.154. Public Meetings

(a) A public meeting is intended for the taking of public comment, and is not a contested case under the APA.

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or Office of Public Assistance may hold public meetings. The executive director or Office of Public Assistance shall hold a public meeting if:

(1) the executive director determines that there is a substantial or significant degree of public interest in an application;

(2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; or

(3) when a public meeting is otherwise required by law.

(d) The applicant shall attend any public meeting held by the executive director or Office of Public Assistance. A tape recording or written transcript of the public meeting shall be made available to the public.

(e) Public notice of the meeting shall be given as required by §39.411(d) of this title (relating to Text of Public Notice).

Source: The provisions of this §55.154 adopted to be effective October 20, 1999, 24 TexReg 9015

§ 55.156. Public Comment Processing

~~(a) The chief clerk shall deliver or mail to the executive director, the Office of Public Interest Counsel, the Office of Public Assistance, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents filed with the chief clerk in response to public notice of an application.~~

~~(b) If comments are received, the following procedures apply to the executive director.~~

(1) Before an application is approved, the executive director shall prepare a response to all timely, relevant and material, or significant public comment, whether or not withdrawn, and specify if a comment has been withdrawn. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes.

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hazardous waste management facility permit applications under §§281.30-281.32 of this title (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste; Definitions; Prioritization Process).

Source: The provisions of this §281.1 adopted to be effective May 28, 1986, 11 TexReg 2312; amended to be effective November 7, 1994, 19 TexReg 8542.

§ 281.2. Applicability

These sections are applicable to the processing of:

- (1) applications for new, amended, or renewed water use permits, certificates of adjudication and certified filings, and extensions of time to commence and/or complete construction of water use facilities;
- (2) applications for new, amended, or renewed wastewater discharge permits;
- (3) applications for new, amended, or renewed injection well permits;
- (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 reclamation 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;
- (10) applications for new, amended, or renewed municipal solid waste permits; and
- (11) applications for new, amended, or renewed radioactive material licenses.

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; amended to be effective June 5, 1997, 22 TexReg 4581.

§ 281.3. Initial Review

~~(a) Applications for permits, licenses, or other types of approvals, except as provided in subsections (b) and (d) of this section, shall be reviewed by the staff for administrative completeness within ten 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.

~~(d) Applications made under Chapter 336 of this title (relating to Radioactive Substance Rules) for issuance or renewal of a license, or for major amendments to a license, shall be reviewed for administrative completeness within 45 days after receipt of the application by the executive director. Applications for minor amendments shall be reviewed for administrative completeness within 30 days after receipt of the application by the executive director.~~

Source: The provisions of this §281.3 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 June 5, 1997, 22 TexReg 4581.

§ 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.

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- 305.531. Establishing and Calculating Additional Conditions and Limitations for TPDES Permits.
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- 305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits.

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- 305.571. Applicability.
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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 Health and Safety Code, Chapters 361 and 401.

(b) The national pollutant discharge elimination system (NPDES) program, as delegated to the State

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of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system (TPDES). The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in 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 (CFR) §122.24;

(C) discharges into aquaculture projects as set forth in 40 CFR §122.25;

(D) discharges from separate storm sewers as set forth in 40 CFR §122.26; and

(E) silvicultural point sources as defined in 40 CFR §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 Subtitle C, the Federal Solid Waste Disposal Act, 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 CWA, §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 sludge use and disposal developed under the CWA, §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; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.2. Definitions

The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and the Texas Health and Safety Code, §§361.003, 401.003, and 401.004, 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.

(1) 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.

~~(2) Bypass—The intentional diversion of a waste stream from any portion of a treatment facility.~~

(3) Class I sludge management facility—Any publicly owned treatment works (POTW) identified under 40 Code of Federal Regulations (CFR), §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.

(4) 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).

(5) 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.

(6) Corrective action management unit (CAMU)—An area within a facility that is designated by the commission under 40 CFR, 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 Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes while implementing such corrective action requirements at the facility.

~~(7) CWA—Clean Water Act (formerly referred to as the Federal Water Pollution and Control Act or~~

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~~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.~~

(8) 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.

(9) 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 discharge 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.

(10) Direct discharge—The discharge of a pollutant.

(11) 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.~~

(12) 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.

(13) 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

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not include a corrective action management unit into which remediation wastes are placed.

~~(14) Effluent limitation—Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.~~

(15) Environmental Protection Agency (EPA)—~~The United States Environmental Protection Agency.~~

(16) 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 Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste);

(17) Facility mailing list—The mailing list for a facility maintained by the commission in accordance with 40 CFR, §124.10(c)(1)(ix) and §39.7 of this title (relating to Public Notice). For Class I injection well underground injection control (UIC) permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

~~(18) Functionally equivalent component—A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.~~

(19) Indirect discharger—A nondomestic discharger introducing pollutants to a POTW.

(20) Injection well permit—A permit issued pursuant to Texas Water Code, Chapter 27.

(21) Land disposal facility—Includes landfills, waste piles, surface impoundments, land farms and injection wells.

~~(22) 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.~~

(23) New discharger—

(A) Any building, structure, facility, or installation:

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~~-(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.

(24) 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.

(25) Operator—The person responsible for the overall operation of a facility.

~~-(26) Outfall—The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to water in this state.~~

(27) Owner—The person who owns a facility or part of a facility.

(28) 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, for radioactive material disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radioactive material disposal license, and an injection well permit.

(29) Person—An individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, partnership, or any other legal entity or association.

~~-(30) Primary industry category—Any industry category listed in 40 CFR, Part 122, Appendix A,~~

~~adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).~~

(31) 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.

(32) 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.

~~-(33) 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.~~

(34) Radioactive material—A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(35) Recommencing discharger—A source which recommences discharge after terminating operations.

(36) 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 CFR, Part 122, 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.

(37) Remediation waste—All solid and hazardous wastes, and all media (including groundwater, sur-

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face 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 Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). 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 Water Code, §7.031, §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title.

(38) 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.

(39) 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. Severe property damage does not mean economic loss caused by delays in production.

(40) Sewage sludge—The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

(41) 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.

(42) Solid waste permit—A permit issued under Texas Civil Statutes, Article 4477-7, as amended.

(43) Storage—The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere.

(44) 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; Texas Water Code; and Texas Administrative Code regulations.

(45) 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

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regulations implementing CWA, §405(d).

(46) 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.

(47) 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 generally applicable effluent limitation requirements or time deadlines of CWA or this title.

(48) Wastewater discharge permit—A permit issued under Texas Water Code, Chapter 26.

(49) 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; amended to be effective December 1, 1997, 22 TexReg 11391; amended to be effective August 8, 1999, 24 TexReg 5879; amended to be effective September 14, 2000, 25 TexReg 8974; amended to be effective November 15, 2001, 26 TexReg 9123.

§ 305.3. Abbreviations

The following abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) CFR—Code of Federal Regulations.
- (2) CWA—Clean Water Act.
- (3) DMR—Discharge monitoring report.
- (4) EPA—United States Environmental Protection Agency.
- (5) NPDES—National pollutant discharge elimination system.
- (6) POTW—Publicly owned treatment works.
- (7) TPDES—Texas pollutant discharge elimination system.

Source: The provisions of this §305.3 adopted to be effective October 8, 1990, 15 TexReg 5492.

30 TAC § 305.21**NATURAL RESOURCE CONSERVATION COMMISSION****SUBCHAPTER B. EMERGENCY ORDERS,
TEMPORARY ORDERS, AND EXECUTIVE
DIRECTOR AUTHORIZATIONS****~~§ 305.21. Emergency Orders and Temporary Or-
ders Authorized~~**

The commission or executive director may issue emergency orders, or the commission may issue temporary orders, relating to the discharge of waste or pollutants into or adjacent to any water in the state under Texas Water Code, §5.509, and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

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; amended to be effective December 10, 1998, 23 TexReg 12440.

**§ 305.29. Emergency Orders for Solid Waste
Activities**

The commission or executive director may issue a mandatory or prohibitory emergency order regarding any activity of solid waste management within its jurisdiction under Texas Water Code, §5.512 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

Source: The provisions of this §305.29 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective February 11, 1997, 22 TexReg 1168; amended to be effective December 10, 1998, 23 TexReg 12440.

**§ 305.30. Emergency Actions Concerning Haz-
ardous Waste**

The commission or executive director may issue an emergency administrative order relating to hazardous waste under Texas Water Code, §5.512 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

Source: The provisions of this §305.30 adopted to be effective December 10, 1998, 23 TexReg 12440.

**~~§ 305.31. Emergency Orders Relating to Radio-
active Substances~~**

When an emergency exists as a result of a matter under the commission's jurisdiction that requires immediate action to protect the public health or safety or the environment, the commission or executive director may issue an order under Texas Water Code, §5.516, Texas Health and Safety Code, §401.056, and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

stating the existence of the emergency and requiring that actions be taken to meet the emergency.

Source: The provisions of this §305.31 adopted to be effective June 5, 1997, 22 TexReg 4583; amended to be effective December 10, 1998, 23 TexReg 12440.

**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 Texas Water Code Chapters 26, 27 and 28, and Texas Health and Safety Code Chapters 361 and 401.

Source: The provisions of this §305.41 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 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 Texas Health and Safety Code, §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 Texas Health and Safety Code, 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.

~~(c) An application for a new, amended, or re-
newed radioactive material license under Chapter~~

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~~336 of this title (relating to Radioactive Substance Rules) shall consist of one signed original and five copies. The executive director may request additional copies. Copies of an application for a low-level radioactive waste disposal license under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be retained by the applicant for distribution in accordance with written instructions from the executive director.~~

(d) For applications involving hazardous waste management facilities for which the owner or operator has submitted Part A of the permit application and has not yet filed Part B, the owner or operator is subject to the requirements for updating the Part A application under 40 Code of Federal Regulations §270.10(g), as amended and adopted in the Code of Federal Regulations through June 29, 1995, (see 60 FedReg 33911).

~~(e) Applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources.~~

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; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective October 19, 1998, 23 TexReg 10653; amended to be effective September 14, 2000, 25 TexReg 8974; amended to be effective December 16, 2001, 26 TexReg 10102.

§ 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.

§ 305.44. Signatories to Applications

(a) All applications shall be signed as follows.

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(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.

~~(d) For radioactive material license applications under Chapter 336 of this title (relating to Radioactive Substance Rules), the applicant or person duly authorized to act for and on the applicant's behalf~~

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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; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 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 8-1/2 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) licenses under the Texas Radiation Control Act; and~~

(J) 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, chemical, and radiological 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 radiological properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved;

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(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), ~~§305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses)~~, §336.207 of this title (relating to General Requirements for the Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to ~~Content of Applications~~), and Chapter 330, Subchapter E of this title (relating 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; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective September 14, 2000, 25 TexReg 8974

§ 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.

~~§ 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 pro-

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posed 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. This subsection does not apply to:

(A) an application to renew a permit; and

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(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.

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~~(e) 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; amended to be effective June 17, 1999, 24 TexReg 4441

§ 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 assurance requirements of Chapter 37 of this title (relating to Financial Assurance) 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; amended to be effective March 21, 2000, 25 TexReg 2368

§ 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

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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 sites owned, operated, or controlled by the applicant in the State of Texas. 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.~~

(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) §§270.13-270.27, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), 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 subparagraph (C) or (D) of this paragraph.~~

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~~-(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, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);

(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 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, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title;

(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;

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~~(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 EPA, 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 §§270.14-270.27. 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

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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 releases.

~~(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~~

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~~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 in accordance with 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 1/2 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

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~~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 traveling 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 traveling to and from the facility within a minimum radius of 2 1/2 miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 1/2 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 in accordance with §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

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~~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 explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraph (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 40 CFR §266.111) 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; amended to be effective May 20, 1999, 24 TexReg 3725; amended to be effective March 21, 2000, 25 TexReg 2368; amended to be effective November 18, 2001, 26 TexReg 9130.

§ 305.51. Revision of Applications for Hazardous Waste Permits

(a) Owners or operators of hazardous waste management facilities, who qualify for interim status

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pursuant to 40 Code of Federal Regulation 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 Code of Federal Regulations §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 Code of Federal Regulations §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 Code of Federal Regulations §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 Code of Federal Regulations (CFR) §265.193 for tanks and ancillary equipment;

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(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 §3004(o) of the Resource Conservation and Recovery Act (RCRA), 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 §3008(h) of the RCRA, 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 CFR, Part 268 or by §3004 of the RCRA, provided that such changes are made solely for the purpose of complying with 40 CFR, Part 268 or §3004 of the RCRA, as amended;

(7) addition of newly regulated units under subsection (a)(5) of this section; and

(8) changes necessary to comply with standards under 40 CFR Part 63, Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

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; amended to be effective December 5, 1999, 24 TexReg 10561

~~§ 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 commission, the Texas Department of Health, or any other appropriate authority stating either that the applicant, or the person delivering~~

~~the waste containing radioactive materials for disposal by the applicant, has a license from the commission, the Texas Department of Health, or any other appropriate authority governing waste containing radioactive materials; or that the applicant or the person served by the applicant does not need such a license. This section does not apply to applications under Chapter 336 of this title (relating to Radioactive Substance Rules).~~

Source: The provisions of this §305.52 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.53. Application Fee

(a) Except for radioactive material licenses or 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 \$100. 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 area 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 (related 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 (related 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:

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~~Further statements or data to enable the commission to determine whether the application should be granted or denied or whether a license should be amended, renewed, or revoked.~~

(f) Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of low-level radioactive waste.

~~Source: The provisions of this §305.54 adopted to be effective June 5, 1997, 22 TexReg 4583; amended to be effective September 3, 1998, 23 TexReg 8837; amended to be effective September 14, 2000, 25 TexReg 8974.~~

**SUBCHAPTER D. AMENDMENTS,
RENEWALS, TRANSFERS, CORRECTIONS,
REVOCATION, AND SUSPENSION OF
PERMITS**

§ 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.~~

§ 305.62. Amendment

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under ~~§305.70 of this title (relating to Municipal Solid Waste Class I Modifications)~~, under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. ~~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.~~ If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submit-

tal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment 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 Subchapter C of this chapter (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. In case of a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), a major amendment is one which:

(A) authorizes a change in the type or concentration limits of wastes to be received;

(B) authorizes receipt of wastes from other states not authorized in the existing license;

(C) authorizes a change in the operator of the facility;

(D) authorizes closure and the final closure plan for the disposal site;

(E) transfers the license to the custodial agency; or

(F) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.

(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 or injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

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(A) ~~except for Texas Pollutant Discharge Elimination System (TPDES) permits, 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; and~~

(B) ~~except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.~~

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) 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;

(D) 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 before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) 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 within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program

~~approved under 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).~~

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(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, justifying 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; and

~~(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.~~

(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

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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; amended to be effective February 11, 1997, 22 TexReg 1169; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective June 17, 1999, 24 TexReg 4441; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.63. Renewal

(a) ~~Any permit renewal application that is declared administratively complete before September 1, 1999 is subject to this section.~~ 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.~~

(b) ~~This section does not apply to applications for renewal of radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substances Rules).~~

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; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective September 23, 1999, 24 TexReg 8309

§ 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) the name and address of the transferee;

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(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

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~~the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), until the new owner or operator has demonstrated compliance with the requirements of Chapter 37, Subchapter P of this title. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title 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 Chapter 37, Subchapter P of this title, the executive director shall notify the old owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title 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

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~~construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or~~

(8) transfer of the permit would maintain the quality of water 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; amended to be effective March 21, 2000, 25 TexReg 2368

§ 305.65. Renewal

Any permit renewal application that is declared administratively complete on or after September 1, 1999 is subject to this section. 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 §50.145 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 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.

(8) After complying with all applicable rules in Chapters 39, 50 and 55 of this title, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(A) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(i) was generated on-site; and

(ii) does not include waste generated from other waste transported to the site; or

(B) processing of hazardous waste if:

(i) the waste was generated on-site;

(ii) the waste does not include waste generated from other waste transported to the site; and

(iii) the processing does not include thermal processing.

(9) If the commission determines that an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

Source: The provisions of this §305.65 adopted to be effective September 23, 1999, 24 TexReg 8309; amended to be effective September 14, 2000, 25 TexReg 8974

§ 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

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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 definition has been revised, or because a previous determination has been changed;

(8) for Class III injection wells, failure to achieve satisfactory restoration progress;

(9) for radioactive material licenses, any violation of the Texas Radiation Control Act or Chapter 336 of this title (relating to Radioactive Substance Rules), or when conditions are revealed by an application, statement of fact, report, record, inspection, or other means, which would have warranted the commission's refusal to issue a license on an original application; or

(10) 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. For radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules), only the executive director may file a petition to revoke or suspend a license.~~

(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.

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~~(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; amended to be effective June 5, 1997, 22 TexReg 4583.~~

§ 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.

~~(c) Upon request of the applicant, the executive director may terminate a radioactive material license in accordance with this section, if the licensee has complied with the applicable decommissioning requirements under Chapter 336 of this title (relating to Radioactive Substance Rules).~~

~~Source: The provisions of this §305.67 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective September 14, 2000, 25 TexReg 8974~~

§ 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).

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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 §39.13 of this title (relating to Mailed Notice) 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 executive director's or 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 commission's rules and 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 Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 335, Subchapter H, Divisions 1 through 4 (relating to

~~Standards for the Management of Specific Wastes~~

~~and Specific Types of Facilities), and 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 requirements and with Chapter 37 of this title (relating to Financial Assurance) 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) Combustion facility changes to meet Title 40 Code of Federal Regulations (CFR) Part 63 Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of this subchapter.

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c), as amended through July 10, 2000 (65 FR 42292), before a permit modification can be requested under this section.

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(j) Military hazardous waste munitions storage, processing, and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) the facility is in existence as a hazardous waste facility, and the facility is already permitted to handle waste military munitions, on the date when waste military munitions become subject to hazardous waste regulatory requirements;

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(2) on or before the date when waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or revise the permit provision restricting the receipt of off-site waste munitions; and

(3) the permittee submits a Class 2 modification request within 180 days of the date when the waste

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military munitions become subject to hazardous waste regulatory requirements.

(k) Appendix 1. The following appendix will be used for the purposes of this subchapter which relates to industrial and hazardous solid waste permit modification at the request of the permittee.

Figure: 30 TAC §305.69(k)

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
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
7. Changes in ownership or operational control of a facility, provided the procedures of §305.64(g) of this title (relating to Transfer of Permits) are followed	1
8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units in accordance with §305.149(b)(2) or (4) of this title (relating to Time Limitation for Construction of Commercial Hazardous Waste Management Units)	2
9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit in accordance with §305.149(b)(3) or (4) of this title	3
10. Any extension in accordance with §305.149(b)(3) of this title of a construction period time limit for commercial hazardous waste management units which has been previously authorized under §305.149(b)(2) of this title	3
11. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility)	1
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 F039 (multi-source leachate) sampling or analysis methods	1
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	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 (CQA) 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 specifications	1
b. Other Changes	2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Groundwater 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 alternate concentration limits (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(10) 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, and §335.165 of this title (relating to Compliance Monitoring Program)	3
b. Changes to a compliance monitoring program as required by §335.165(11) of this title, unless otherwise specified in this appendix.....	2

8. Corrective action program:

- a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title 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) of this title, 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'
- 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'
- c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director..... 1'
- d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director..... 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 nonhazardous wastes after final receipt of hazardous wastes under 40 Code of Federal Regulations (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:

- 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'
- g. Staging Pile 2

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) of this appendix 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) of this appendix 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)(i), 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'
2.	Modification of container units, as follows:	
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 §305.89(g) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) 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)(i), 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'
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-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.	Modification or addition of tank units or treatment processes, as follows:	
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) of this appendix	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) of this appendix	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'
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)(i), 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'

2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit2
 3. Replacement of a tank with a tank that meets the same design standards and has a capacity within $\pm 10\%$ of the replaced tank provided1
 - a. The capacity difference is no more than 1,500 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 practice2
 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) of this appendix3
 - 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) of this appendix2
 - 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)(i), 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
 - d. 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-containing wastes (F020, 021, 022, 023, 026, 027, and 028)1
- Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.
- H. Surface Impoundments
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity3
 2. Replacement of a surface impoundment unit3
 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 system2
 4. Modification of a surface impoundment management practice2
 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 permit3
 - b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit2
 - 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)(i), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(n)(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) of this title	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 for modification procedures to be used for the management of newly listed or identified wastes.

- 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 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 for modification procedures to be used for the management of newly listed or identified wastes.

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 of 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 for modification procedures to be used for the management of newly listed or identified wastes.

- 7. Modifications of unconstructed units to comply with §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 of this title.....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

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

- 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 264.276(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
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
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 feedrate 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
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 HCl/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 means3
- 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 controls3
- 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 principal organic hazardous constituent (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 means3
- 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 permit2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly regulated wastes and units.

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 burn2
- 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 director1'
- c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director1'
- 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 director1'
- 8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit1
- 9. Technology changes needed to meet standards under Title 40 CFR Part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), provided the procedures of §305.69(i) of this title are followed.....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
- 3. Approval of a staging pile or staging pile operating term extension pursuant to 40 Code of Federal Regulations §264.554.....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 capacity2

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 a containment building that meets the same design standards provided:
 - a. The unit capacity is not increased1
 - b. The replacement containment building meets the same conditions in the permit1
4. Modification of a containment building management practice2
5. Storage or treatment of different wastes in containment buildings:
 - a. That require additional or different management practices3
 - b. That do not require additional or different management practices2

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; amended to be effective August 8, 1999, 24TexReg5879; amended to be effective March 21, 2000, 25 TexReg 2368; amended to be effective April 12, 2001, 26 TexReg 2739; amended to be effective November 15, 2001, 26 TexReg 9123.

~~§ 305.70. Municipal Solid Waste Permit and Registration Modifications~~

(a) This section applies only to modifications to municipal solid waste (MSW) permits and registrations related to regulated MSW activities. Modifications to industrial and hazardous solid waste permits are covered in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Changes to conditions in an MSW permit or registration which were specifically ordered by the commission following the contested hearing process or included by the executive director as a result of negotiations between the applicant and interested persons during the permitting/registration process are not eligible for modification under this section. The effective date of the repeal of existing §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) and replacement with this new §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) is June 3, 2002. Applications for modifications filed before this new section becomes effective, will be subject to the section as it existed prior to June 3, 2002.

(b) References to the term "permit" in this section include the permit document and all of the attachments thereto as further defined in 30 TAC Chapter 330, Subchapter E, §§330.50-330.64 of this title (relating to Permit Procedures). References to the term "registration" in this section include the registration document and all of the attachments thereto

~~as further defined in Chapter 330, Subchapter E of this title.~~

(c) Except as provided in subsection (k) of this section, any increase in the landfill capacity authorized for waste disposal or any increase in the permitted or registered daily maximum limit of waste acceptance shall be subject either to the requirements of §305.62(c)(1) of this title (relating to Amendment) in the case of a permitted facility, or to the requirements of a new registration in the case of a registered facility.

(d) Permit and registration modifications apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment.

(e) A permittee or registrant may implement a modification to an MSW permit or registration provided that the permittee or registrant has received prior written authorization for the modification from the executive director. In order to receive prior written authorization, the permittee or registrant must submit a modification application to the executive director which includes, at a minimum, the following information:

- (1) a description of the proposed change;
- (2) an explanation detailing why the change is necessary;
- (3) appropriate revisions to all applicable narrative pages and drawings of Attachment A of a permit or a registration (i.e., a site development plan, site operating plan, engineering report, or any other approved plan attached to a permit or a registration document). These revisions shall be marked and include revision dates and notes as necessary in accordance with §330.51(e)(4) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.64(b) and (c) of this title (relating to Additional Standard Permit Conditions for

~~(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; amended to be effective June 17, 1999, 24 TexReg 4441

§ 305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee

(a) This section applies only to Underground Injection Control permits.

(b) With the permittee's consent, the executive director may modify administratively a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures and notice requirements of this chapter. Any change to the permit not processed as a minor modification under this section must be made for cause and in compliance with appropriate public notice requirements. Minor modifications may only:

- (1) Correct typographical errors;
- (2) Require more frequent monitoring or reporting by the permittee;
- (3) 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;
- (4) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and in the judgement of the executive director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;
- (5) Change construction requirements, provided that the alterations comply with the requirements of

~~Chapter 331 of this title (relating to Underground Injection Control); or~~

(6) Amend a plugging and abandonment plan which has been updated under §305.154(7) of this title (relating to Standards).

Source: The provisions of this §305.72 adopted to be effective February 11, 1997, 22 TexReg 1169.

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, ~~radioactive material disposal~~, 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; amended to be effective September 14, 2000, 25 TexReg 8974

§ 305.122. Characteristics of Permits

(a) Compliance with a 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 40 Code of Federal Regulations (CFR) Part 268, restricting the placement of hazardous wastes in or on the land;
- (3) are promulgated under 40 CFR 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, construction quality assurance programs, monitoring, action leakage rates, and response action plans, and will be implemented through the Class 1 permit modifications procedures of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); or
- (4) are promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under §335.112 of this title (relating to Standards).

(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

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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; amended to be effective November 15, 2001, 26 TexReg 9123.

~~§ 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 Health and Safety Code, Chapters 361 and 401.

Source: The provisions of this §305.123 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective September 14, 2000, 25 TexReg 8974.

§ 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.

§ 305.125. Standard Permit Conditions

Conditions applicable to all permits issued under this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are as follows.

~~(1) The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal~~

30 TAC § 305.125

~~application or an application for a permit for an other facility.~~

(2) The permittee must apply for an amendment or renewal before the expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity terminates upon the effective denial of said application.

~~(3) It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.~~

(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) installed or used by the permittee to achieve compliance with the permit conditions. ~~For Underground Injection Control permits, proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit conditions.~~

(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, and copies of records required to be kept ~~by the permit.~~

(7) The permittee shall give notice to the executive director before 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) Such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission 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 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 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 pollutants listed in a TPDES permit to be reported within 24 hours.

~~-(C) Holders of radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules) shall report noncompliances/incidents to the executive director according to the requirements of §336.335 of this title (relating to Reporting Requirements for Incidents).-~~

(10) Inspection and entry shall be allowed under Texas Water Code, Chapters 26 - 28, Texas Health and Safety Code, §§361.032-361.033, 361.037, and 401.063, and 40 Code of Federal Regulations (CFR), §122.41(i). The statement in 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 as otherwise required by Chapter 336 of this title or for records of monitoring information required by a 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 shall be extended at the request of the executive director.

(C) Records of monitoring activities shall include:

(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, under Texas Water Code, §§26.136, 26.212, and 26.213 for~~

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*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 (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 noncompliance.~~

(21) For hazardous waste management facility permits, the executive director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR, §124.33(b), as amended through December 11, 1995, at 60 FedReg 63417. The information repository will be governed by the provisions in 40 CFR §124.33(c)-(f), as amended through December 11, 1995, at 60 FedReg 63417.

~~(22) Notice of bankruptcy.~~

(A) Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:

(i) the permittee;

(ii) an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or

(iii) an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.

(B) This notification must indicate:

(i) the name of the permittee;

(ii) the permit number(s);

(iii) the bankruptcy court in which the petition for bankruptcy was filed; and

~~(iv) the date of filing of the petition.~~

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; amended to be effective February 11, 1997, 22 TexReg 1169; amended to be effective August 8, 1999, 24 TexReg 5879; amended to be effective September 14, 2000, 25 TexReg 8974

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~~§ 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 or annual average 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 or annual average 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 enforcement 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 of this title (relating to Establishing and Calculating Additional Condi-

tions 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; amended to be effective December 27, 1998, 23 TexReg 42930.

§ 305.127. Conditions To Be Determined for Individual Permits

Conditions to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable, incorporated into the permit expressly or by reference, are:

- (1) Duration.
 - (A) Injection well permits.
 - (i) Permits for Class I and Class V wells shall be for a fixed term not to exceed ten years.
 - (ii) Permits for Class III wells or projects may be 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 for a fixed term not to exceed ten years.
 - (ii) Other solid waste permits may be 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 for a term not to exceed five years.

(ii) All other permits shall be as follows:

(I) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be for a term not to exceed five years.

(II) Confined animal feeding operation permits may be for the life of the project.

(III) Other wastewater permits, including permits which regulate land disposal systems, shall be for a term not to exceed ten years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be for a term not to exceed ten 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 less than the full allowable term under this section.

(G) Radioactive material licenses.

(i) Licenses issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be for a fixed term not to exceed 20 years.

(ii) Other radioactive material licenses shall be for a fixed term not to exceed ten years.

(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 law, 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

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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 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.

(E) For UIC permits, the time for compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit. Except as provided in clause (iii)(I)(b-) of this subparagraph, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(iii) A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and

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meet permit requirements as follows:

(I) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(-a-) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(-b-) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(II) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the cessation date, the permit shall contain a schedule leading to cessation of activities which will ensure timely compliance with applicable requirements.

(III) If the permittee is undecided whether to cease conducting regulated activities, the executive director may issue or modify a permit to contain two schedules as follows:

(-a-) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(-b-) One schedule shall lead to timely compliance with applicable requirements;

(-c-) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(-d-) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under item (-a-) of this subclause, it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to cessation if the decision is to cease conducting regulated activities.

(IV) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the executive director, such as a resolution of the board of directors of a corporation.

(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, to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards, 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 for injection well standards, Chapter 335 of this title for solid waste facility standards, Chapter 336 of this title (relating to Radioactive Material Disposal Standards), Chapter 309 of this title for waste discharge standards, and Chapter 329 of this title 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; amended to be effective February 11, 1997, 22 TexReg 1169; amended to be effective September 14, 2000, 25 TexReg 8974

§ 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.

§ 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),

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~~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.~~

**SUBCHAPTER G. ADDITIONAL
CONDITIONS FOR HAZARDOUS AND
INDUSTRIAL 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

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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

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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.

~~§ 305.147. 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 following 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 inter-

~~ested 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

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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 periods 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 through May 14, 1999 (64 FR 26315).

Source: The provisions of this §305.150 adopted to be effective November 20, 1996, 21 TexReg 10982; amended to be effective November 15, 2001, 26 TexReg 9123.

SUBCHAPTER H. ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS

§ 305.151. Applicability

Unless stated otherwise, the following conditions apply to all Class I, Class III, and Class V injection well permits and shall be incorporated into the permit expressly or by reference. 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; amended to be effective February 11, 1997, 22 TexReg 1169.

§ 305.152. Corrective Action

For Class I and III wells only:

(1) For 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 conditions 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.

(2) The criteria of §331.44 of this title (relating to Corrective Action Standards) will be used to determine adequacy.

(3) A permit issued for an existing injection well requiring corrective action shall include a compli-

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~~(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 1. 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 execu-

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tive 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.

§ 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) The chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 Code of Federal Regulations §270.62(b)(6)(i)-(ii), as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

(7) 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 (O₂) 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;

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(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.

(8) 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 (7) 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.

(9) All data collected during any trial burn shall be submitted to the executive director immediately following the completion of the trial burn.

(10) 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).

(11) Based on the results of the trial burn, the commission or the executive director, as appropriate, subject to §50.33 of this title (relating to Executive Director Action on Application), 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,

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1990, 15 TexReg 6015; amended to be effective November 20, 1996, 21 TexReg 10982; amended to be effective August 8, 1999, 24 TexReg 5879

§ 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.

§ 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)-(5) and (7)-(10) 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). The chief clerk shall provide notice of the executive director's intention to approve the trial burn, in

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accordance with the timing and distribution requirements of §305.172(6) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions). The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for approval of the plan and the time period during which the trial burn would be conducted. 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; amended to be effective August 8, 1999, 24 TexReg 5879

§ 305.175. Conditional Exemption for Demonstrating Compliance with Certain Air Standards

When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 Code of Federal Regulations Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).

Source: The provisions of this §305.175 adopted to be effective November 15, 2001, 26 TexReg 9123.

NATURAL RESOURCE CONSERVATION COMMISSION**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.

§ 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 permit to attempt to meet all requirements pertaining to unit design,

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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.

§ 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.

§ 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.

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(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.

**SUBCHAPTER K. RESEARCH,
DEVELOPMENT, AND DEMONSTRATION
PERMITS**

§ 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 efficacy 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

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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.

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 and hearing shall be applicable in proceedings to establish the plan: §39.3 of this title (relating to Purpose); §39.5 of this title (relating to General Provisions); §39.7 of this title (relating to Mailing Lists); §39.11 of this title (relating to Text of Public Notice); §39.13 of this title (relating to Mailed Notice); §39.17 of this title (relating to Notice of Minor Amendment); §39.21 of this title (relating to Notice of Commission Meeting to Evaluate a Hearing Request on an Application); §39.23 of this title (relating to Notice of Hearing Held by SOAH, Including Hearing on Hearing Requests); §39.25 of

~~this title (relating to Notice of Contested Enforcement Case Hearing); §39.103 of this title (relating to Application for Industrial or Hazardous Waste Facility Permit); §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit); §39.107 of this title (relating to Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit); §39.109 of this title (relating to Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit); §50.13 of this title (relating to Action on Application); §50.15 of this title (relating to Scope of Proceedings); §50.17 of this title (relating to Commission Actions); §55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment); Chapter 281 of this title (relating to Applications Processing); §305.43 of this title (relating to Who Applies); §305.44 of this title (relating to Signatories to Applications); §305.47 of this title (relating to Retention of Application Data); §305.50 of this title (relating to Additional Requirements for an Application for a Solid Waste Permit); §305.53 of this title (relating to Application Fees); §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 rec-~~

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~~TPDES permit for a commercial aquaculture facility~~ located within the coastal zone and engaged in the production of shrimp, the commission shall consider all relevant factors, including:

- (1) the site-assessment environmental report provided by the applicant under subsection (a)(1)(A) of this section;
- (2) any sensitive aquatic habitat guidelines established by TPWD; and
- (3) any comments on the application provided by the three-member application review committee referred to in subsection (b) of this section.

Source: The provisions of this §305.539 adopted to be effective September 13, 2000, 25 TexReg 8985

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

§ 305.571. Applicability

(a) 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).

(b) When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40

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CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance, the requirements of this subchapter do not apply, except that the executive director may apply the provisions of this subchapter, on a case-by-case basis, and require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) or (4)(A) of this title (relating to Conditions To Be Determined for Individual Permits).

Source: The provisions of this §305.571 adopted to be effective July 29, 1992, 17 TexReg 5016; amended to be effective November 15, 2001, 26 TexReg 9123.

§ 305.572. Permit and Trial Burn Requirements

(a) 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 December 11, 1995 (see 60 FedReg 63417):

(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 §270.66(d)(3), and 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.

(b) With regard to trial burn notice procedures, the chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 Code of Federal Regulations §270.66(d)(3)(i)-(ii) as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

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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; amended to be effective August 8, 1999, 24 TexReg 5879

§ 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 through 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 (relating to Additional Interim Status Standards for Burners) 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). The chief clerk shall provide notice of the executive director's intention to approve the trial burn, in accordance with the timing and distribution requirements of §305.572(b) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions). The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including

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the anticipated time schedule for approval of the plan and the time period during which the trial burn would be conducted. 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; amended to be effective August 8, 1999, 24 TexReg 5869