

US EPA ARCHIVE DOCUMENT

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Signed
12/5/86

AMENDMENT TO THE MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF TEXAS
AND THE
U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION VI
FOR FINAL AUTHORIZATION

I. General

This amendment to the Agreement, which was effective December 26, 1984, and amended April 18, 1985, and September 10, 1985, is adopted for the purpose of clarifying certain interpretations of the rules of the Texas Water Commission relating to the approved state hazardous waste program. These rules are contained in 31 TAC Chapter 305 relating to Consolidated Permits, which became effective June 19, 1986, and in 31 TAC Chapter 335 relating to Industrial Solid Waste and Municipal Hazardous Waste, which became effective May 28, 1986, and the agreements set out herein relate only to the rules as they are applied to hazardous waste.

This amendment is entered into by the Executive Director of the Texas Water Commission (hereinafter "Executive Director" or "the State"), and the Regional Administrator, U. S. Environmental Protection Agency, Region VI (hereinafter "Regional Administrator" or "EPA").

II. Title 31 TAC §§305.24, 305.25, and 305.30

Title 31 TAC §305.24(a) provides that notices relating to emergency orders may be issued without notice and hearing, or with such notice as the Commission deems practicable. The State agrees that emergency orders issued under 31 TAC §305.30 shall be accompanied by a public notice. The State further agrees that 31 TAC §305.25 relating to executive director authorizations to discharge shall not be used on an emergency basis to authorize the storage, processing, or disposal of hazardous waste.

Title 31 TAC §305.30 provides for the issuance of emergency orders authorizing the processing, storage or disposal of hazardous waste. Subsection (f) of this section provides for the content of notices of hearing relating to such orders. The State agrees that any notice issued pursuant to §305.30(f) shall include the name and address of the office granting the emergency order.

III. Title 31 TAC §305.44(a)(3)

Title 31 TAC §305.44(a)(3) provides that permit applications for a municipality, state, federal, or other public agency shall be signed by either a principal executive officer or ranking official. For purposes of the implementation of this requirement, the State, in accepting a hazardous waste management application, shall require that the ranking official be a ranking elected official.

IV. Title 31 TAC §305.46

Title 31 TAC Section 305.46 provides for review and withdrawal of application information submitted to the Executive Director under a claim of confidentiality. If such claim is not approved by the Executive Director, the rule provides that the applicant may withdraw the material. The State agrees that any information withdrawn by, or returned to, the applicant under this rule shall not be considered by the Executive Director in the preparation of a draft permit. Any such information considered by the Commission, in those instances where a hearing is held, would be offered and admitted into evidence and part of the record for the proceeding.

V. Title 31 TAC §305.68

Title 31 TAC §305.68 sets out procedural requirements for action and notice on petitions for revocation or suspension, including a requirement that notice of the hearing be given to the permittee not less than 10 days prior to the hearing. The State agrees that for such actions involving hazardous waste permits, such notice shall be given not less than 30 days prior to the hearing, and that such notice shall be given by publication, by mail and by radio broadcast in accordance with 31 TAC §§305.102, 305.103 and 305.104.

VI. Title 31 TAC §§305.65 and 305.62(c)(2)

Title 31 TAC §305.65 sets out circumstances whereby the Commission may make corrections to permits, either by reissuing the permit or issuing an endorsement to the permit, without observing formal amendment procedures. Title 31 TAC §305.65(5) allows such procedures if the purpose is to state more accurately or update any provision in a permit but without changing the substance of such provision, including the updating of provisions of an application which have been incorporated by reference in a permit. The State agrees that the procedures for corrections of permits shall be applied to update application provisions incorporated by reference only

in those instances where nonsubstantive changes are made to the incorporated materials, such as the updating of a rule reference.

Title 31 TAC §305.62(c)(2) sets out requirements applicable to minor amendments of permits. The State agrees that any changes made to permits without formal amendment procedures shall be no broader than those set out in 40 CFR §270.42.

VII. Title 31 TAC §305.96

Title 31 TAC §305.96 requires that the Commission shall conduct a public hearing on a petition for a major amendment, unless the permittee files sufficient consent and waiver of hearing. The State agrees that it will hold a public hearing on any amendment in all cases where a request for hearing has been filed with the Commission by a person affected in accordance with 31 TAC §305.105.

VIII. Title 31 TAC §335.1 (definition of "solid waste")

The definition of solid waste contained in 31 TAC §335.1 provides that the term "solid waste" shall not include:

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

The State agrees that such exclusion shall not be construed to affect the control by the State of all hazardous wastes controlled under 40 CFR Part 261.

IX. Effect of Agreement

Except as specified herein, all terms, duties, responsibilities and agreements set out in the agreement, as amended, remain in full force and effect in accordance with 40 CFR §271.22 and §271.23.

X. Effective Date

This amendment shall take effect on the date specified in the Federal Register Notice announcing the approval of the revision to the State program.

XI. Approval

Date: 10-29-86

By:

Larry R. Soward
Larry R. Soward
Executive Director
Texas Water Commission

Date: 12/5/86

By:

Mym O. K. Kinde
Regional Administrator
U. S. Environmental Protection
Agency, Region VI