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TEXAS WATER COMMISSION
Permanent Rule Change

Chapter 281
Applications Processing



1. Purpose. This change transmittal provides the page(s) that reflect changes and additions to the Texas Water Commission Volume of Permanent Rules.
2. Explanation of Change. The Texas Water Commission has adopted amendments to 31 Texas Administrative Code Chapter 281, entitled "Applications Processing." The adoption of the rules was published in the Texas Register on June 30, 1987 at 12 TexReg 2102. Please replace the existing Chapter 281 with the amended Chapter 281 attached.



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CHAPTER 281 APPLICATIONS PROCESSING

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Applications Processing
§§281.1-281.7 & 281.16-281.24

These sections are promulgated under the authority of Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission.

§281.1. Purpose. It is the intent of the Texas Water Commission to establish a general policy for the processing of applications for permits, licenses and other types of approvals in order to achieve the greatest efficiency and effectiveness possible. To this end, it is the policy of the commission that applications for permits, licenses, and other types of approvals listed in §281.2 of this title (relating to Applicability) be processed by the executive director according to the schedule established in this chapter.

§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, except those filed pursuant to §331.8 of this title (relating to Application Required for Existing Wells);
- (4) applications for new, amended or renewed industrial solid 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; and
- (9) applications for new or amended certificates of convenience and necessity.

§281.3. Initial Review.

- (a) Applications for permits, licenses or other types of approvals, except as provided in subsection (b) of this section, shall be reviewed by the staff for administrative

completeness within 10 working days of receipt of the application by the executive director.

- (b) Applications made under §335.43 of this title (relating to Permit Required) or §331.7 of this title (relating to Permit Required) shall be reviewed by the staff for administrative completeness within 15 working days after assignment of the application to a staff member for review under this section. Prior to commencement of review of an application under this section, the executive director shall notify the applicant by first-class mail of the date on which the review will commence.
- (c) For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, 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.

§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; and
- (6) the required engineering plans or studies; and
- (7) any other information as the executive director or the commission may reasonably require.

§281.5. Application for Wastewater Discharge, Underground Injection, Hazardous Waste and Industrial Solid Waste Management Permits. Applications for wastewater discharge, underground injection, hazardous waste and industrial solid waste management permits must include:

- (1) complete application form(s), signed and notarized, and appropriate copies provided;
- (2) the payment of fees;
- (3) the verified legal status of the applicant;
- (4) the signature of the applicant, checked against agency requirements;
- (5) the attachment of technical reports and supporting data required by the application;

- (6) a list of adjacent and potentially affected landowners and their addresses along with a map locating the property owned by these persons; and
- (7) any other information as the executive director or the commission may reasonably require.

§281.6. Applications for Plan Approval of Reclamation Projects. Applications for plan approval of reclamation projects must include:

- (1) complete application form(s), signed and notarized;
- (2) an engineering report and supporting data; and
- (3) a list of adjacent and potentially affected landowners along with a map locating the land owned by these persons; and
- (4) any other information as the executive director or the commission may reasonably require.

§281.7. Applications for Weather Modification Permits. Applications for weather modification permits and licenses must include:

- (1) complete application form(s);
- (2) the payment of fees;
- (3) for weather modification permits, a notice of intention approved in form by the executive director in accordance with §289.17 of this title (relating to Notice of Intention); and
- (4) any other information as the executive director or the commission may reasonably require.

§281.16. Applications for Certificates of Convenience and Necessity. Applications for certificates of convenience and necessity must include:

- (1) three copies of the appropriate application form prescribed by the executive director, completed as instructed, and properly executed;
- (2) territorial maps filed in support of such application for initial or amended certificates that fulfill the following requirements;
 - (A) for water and sewer utilities, the area to be served shall be shown on a state highway county map, scale one-inch equals two-miles. It shall clearly define the proposed location of the applicant and each neighboring water or sewer utility within five miles of applicant's present location, and service boundaries shall conform to verifiable landmarks such as roads, creeks, railroads, etc. Facilities shall be shown on United States Geological Survey 7½-minute series maps, subdivision plats, engineering planning maps, or other large scale maps;
 - (B) three copies of each map shall be filed;

- (C) separate maps shall be filed for each county in which the reporting utility operates;
- (D) if applicable, the map shall separately indicate the production facilities, transmission facilities, and distribution facilities as located within the territory claimed. A color code may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with such exactness that the facility can be located "on the ground" from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location;
- (3) three copies of any evidence as required by the commission to show that the applicant has received the required consent or permit of any other public authority having jurisdiction, for example, municipalities;
- (4) any other information as the executive director or the commission may reasonably require.

§281.17. Notice of Receipt of Application and Declaration of Administrative Completeness.

- (a) Applications for use of state water. If an application for the use of state water, other than for a permit under §§297.13 of this title (relating to Temporary Permit) or §§297.17 of this title (relating to Emergency Permit), is received containing the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness suitable for mailing or publishing, and a brief technical summary of the application to assist the chief clerk. The executive director shall forward a copy of the statement and brief technical summary to the chief clerk, along with a copy of the application. The chief clerk shall notify every person entitled to notification of the filing of an application under §295.153 of this title (relating to Notice by Mail) by mail in the manner provided therein.
- (b) Applications for temporary permits to use state water. If an application for a temporary permit, other than a provisional temporary permit under §295.181 of this title (relating to Applications for Temporary Permits; Provisional Issuance in Certain Cases), for the use of state water is received containing the required information and attachments required by §281.4 of this title (relating to Applications for Use of State Water) as set forth therein, the executive director or his designee shall prepare a statement of the receipt of the application and declaration of administrative completeness suitable for mailing

- or publishing, and shall forward a copy of the statement to the chief clerk. The chief clerk shall mail a copy of the statement of the receipt of the application and declaration of administrative completeness to every water rights holder of record with the commission who would be entitled to notice of hearing under §295.154 of this title (relating to Notice for Temporary Water Use Permit).
- (c) Applications for provisional temporary permits to use state water. When an application for a provisional temporary permit for the use of State Water under §295.181 of this title (relating to Application for Temporary Permits; Provisional Issuance in Certain Cases), is received containing the information and attachments required by §281.4 of this title (relating to Applications for Use of State Water), the chief clerk shall cause notice of the receipt of the application and declaration of administrative completeness to be published in the Texas Register. The chief clerk may include in the notice other information concerning the disposition of the application.
 - (d) Other applications. Upon receipt of an application described in §281.2(2)-(9) of this title (relating to Applicability) which contains the information and attachments required by §§281.5-281.7 and 281.16 of this title (relating to Application for Wastewater Discharge, Underground Injection, Hazardous Waste and Industrial Solid Waste Management Permits; Applications for Plan Approval of Reclamation Projects; Applications for Weather Modifications Permits; and Applications for Certificates of Convenience and Necessity), the executive director or his designee shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing and shall forward that statement to the chief clerk. The chief clerk shall notify every person entitled to notification of a particular application under the rules of the commission.
 - (e) Notice requirements. The notice of receipt of the application and declaration of administrative completeness shall contain the following information:
 - (1) the identifying number given the application by the commission;
 - (2) the type of permit or license sought under the application;
 - (3) the name and address of the applicant;
 - (4) the date on which the application was submitted; and
 - (5) a brief summary of the information included in the application.
 - (f) Notice of application and draft permit. Nothing in this section shall be construed so as to waive the requirement

of notice of the application and draft permit in accordance with §§305.91-305.105 of this title (relating to Actions, Notice and Hearing) for applications for wastewater discharge, underground injection, and hazardous waste and industrial solid waste management permits.

§281.18. Applications Returned. If an application or petition is received which is not administratively complete, the staff shall notify the applicant of the deficiencies prior to expiration of the applicable review period established by §281.3(a) and (b) of this title (relating to Initial Review) by certified mail return receipt requested. If the additional information is received within 30 days of receipt of the deficiency notice, the staff will evaluate the information within eight working days and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative completeness in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). If the required information is not forthcoming from the applicant within 30 days of the date of receipt of the deficiency notice, the executive director shall return the incomplete application to the applicant.

§281.19. Technical Review.

- (a) After an application is determined by the staff to be administratively complete on its face, the staff shall commence a technical review as necessary and appropriate. For purposes of these sections, the technical review period is that period of time beginning with the completion of the initial review period and will continue for a period of time not to exceed 75 working days. In the case of applications filed under §291.102 of this title (relating to Certificate Required), the technical review period is that period of time beginning 30 days after notice of the application has been given in accordance with §291.109 (relating to Notice and Hearing for Applications for Certificates of Convenience and Necessity) and will continue for a period of time not to exceed 75 working days. In the case of applications filed under §335.43 of this title (relating to Permit Required) or §331.7 of this title (relating to Permit Required), the technical review period shall commence upon assignment of the application to a staff member and continue for a period of time not to exceed 120 days.
- (b) The applicant shall be promptly notified of any additional technical material as may be necessary for a complete staff review. If the applicant provides the information within the period of time prescribed by subsection (a) of this section, the staff will complete processing of the application within the technical review period extended by the number of days required for the additional data. If the necessary additional information is not received by

the executive director prior to expiration of the technical review period and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, the executive director may return the application to the applicant. In no event, however, will the applicant have less than 30 days to provide the technical data before an application is returned. Decisions to return material to the applicant during the technical review stage will be made on a case by case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the commission for a decision instead of having the application returned.

§281.20. Extension. If the staff determines that the technical review of an application cannot be completed within the period of time prescribed by §281.19(a) of this title (relating to Technical Review), the staff will furnish the executive director or his designee with written information regarding the reasons which necessitate the delay and the amount of additional time required by the staff to complete the review. Any extension of the period for technical review must be approved by the executive director or his designee in writing.

§281.21. Draft Permit and Compliance Summary.

- (a) The provisions of this section are applicable to applications for waste disposal activities conducted under the authority of the Texas Water Code, Chapters 26 and 27, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.
- (b) The executive director shall prepare a draft permit consistent with all applicable commission rules, unless a recommendation is made not to grant an application. The draft permit will be filed with the commission to be included in the consideration of the application for permit and is subject to change during the course of the proceedings on the application. The draft permit shall be available for public review.
- (c) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The executive director shall send this summary together with the draft permit to the applicant and on request, to any other person. The summary shall include the following information, where applicable:
 - (1) a brief description of the type of facility or activity which is the subject of the draft permit;
 - (2) the type and quantity of wastes, fluids, or pollutants which are proposed to be or are being

- processed, stored, disposed of, injected, emitted, or discharged;
- (3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
 - (4) reasons why any requested variances or alternatives to required standards do or do not appear justified;
 - (5) a description of the procedures for reaching a final decision on the draft permit, including procedures whereby the public may participate in the final decision; and
 - (6) the name and telephone number of any persons to contact for additional information.
- (d) The executive director shall prepare a summary which describes the compliance status of persons applying for permits issued under the Texas Solid Waste Disposal Act, Texas Civil Statutes, article 4477-7; the Injection Well Act, Texas Water Code, Chapter 27; and the Water Quality Control Act, Texas Water Code, Chapter 26. For applications filed under the Texas Solid Waste Disposal Act or the Injection Well Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the Texas Water Commission under the authority of both statutes. For applications filed under the Water Quality Control Act, the summary shall include the applicant's compliance status with respect to rules, orders, or permits issued by the Texas Water Commission under the authority of the Texas Water Code. Upon completion of technical review and prior to issuance of public notice in accordance with §§305.91-305.105 of this title (relating to Actions, Notice and Hearing), the executive director shall send the compliance summary, together with the draft permit and technical summary, if applicable, to the applicant and on request, to any other person. The compliance summary shall include information relative to the site which is the subject of the current application as well as other facilities owned or operated by the applicant which are under the commission's jurisdiction whether permitted or not. The summary shall cover at least the two-year period preceding the date on which technical review is complete and shall include:
- (1) the date(s) and description of any citizen complaints received;
 - (2) the date(s) of all agency inspections;
 - (3) for each inspection, whether a condition of noncompliance was alleged by the inspector and a brief description of the resulting environmental impact;
 - (4) the date(s) of any agency enforcement action and the applicant's response to such action;

- (5) for applicable facilities, the date(s) and description of any incident the applicant reported to the agency which required implementation of the facility's contingency plan; and
- (6) the name and telephone number of a person to contact for additional information regarding compliance history.

§281.22. Referral to Commission.

- (a) When administrative and technical review has been completed, the application shall be forwarded to the commission for filing and setting. For the purpose of providing adequate notice, the executive director shall include a recommendation to the commission of the area wherein the application, if granted, would have a potential impact, and a mailing list of persons who may be affected.
- (b) For applications involving hazardous waste, the commission shall not issue a permit before receiving a complete application for a permit. However, a facility may be eligible for a permit by rule or may be subject to an emergency order.

§281.23. Application Amendment. No amendments to application which would constitute a major amendment under the terms of §305.62 of this title (relating to Amendment) can be made by the applicant after the chief clerk has issued notice of the application and draft permit pursuant to §§305.91-305.105 of this title (relating to Actions, Notice and Hearing), unless new notice is issued which includes a description of the proposed amendments to the application. For purposes of this section, an attempted transfer of an application shall constitute an amendment requiring additional notice.

§281.24. Effect of Rules. The time limits set out in these rules are not jurisdictional.

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Subchapter A
General Provisions
§§305.1-305.2

These sections are adopted under Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.1. Scope and Applicability. The provisions of this chapter set the standards and requirements for applications, permits and actions by the commission to carry out the responsibilities for management of waste disposal activities under the Texas Water Code, Chapters 26, 27 and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

§305.2. Definitions. The definitions contained in the Texas Water Code, §§26.001, 27.002 and 28.001, and Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Application - A formal written request for commission action relative to a permit, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

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.

Facility - 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.

Injection well permit - A permit issued pursuant to the Texas Water Code, Chapter 27.

Land disposal facility - includes landfills, waste piles, surface impoundments, land farms and injection wells.

Operator - The person responsible for the overall operation of a facility.

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

Owner - The person who owns a facility or part of a facility.

Permit - A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing or disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, and an injection well permit.

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

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.

Radioactive material - A material which is identified as a radioactive material under Texas Civil Statutes, Article 4590f, as amended, and the rules adopted by the Texas Board of Health pursuant thereto.

Site - The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Solid waste permit - A permit issued pursuant to Texas Civil Statutes, Article 4477-7, as amended.

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

Wastewater discharge permit - A permit issued pursuant to the Texas Water Code, Chapter 26.

- (6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use;
 - (7) for temporary orders, a list of potentially affected persons in accordance with §305.48(1) of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits); and
 - (8) payment of appropriate application fees in accordance with §305.27 of this title (relating to Application Fees).
- (b) If the applicant is other than an individual, the application must be sworn to by someone authorized to do so for the applicant, as provided for in §305.44 of this title (relating to Signatories To Applications).
 - (c) If the executive director issues an authorization to discharge as provided in §305.25 of this title (relating to Executive Director Authorizations To Discharge), the applicant must submit the sworn application as required in subsection (a) of this section before the date of the commission's public hearing to consider the authorization.

§305.23. Emergency Orders.

- (a) The commission may issue emergency orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, whether or not the discharge is covered by a waste discharge permit, without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, only if the commission finds the following to be true:
 - (1) that the discharge is unavoidable to prevent loss of life, serious bodily injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;
 - (2) that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;
 - (3) that the estimate of the dates on which the proposed discharge will begin and end and the estimate of the volume and quality of the proposed discharge submitted by the applicant are reasonable and are attainable; and

- (4) that the measures proposed by the applicant to minimize the volume and duration of the discharge, and to maximize the waste treatment efficiency of treatment units not taken out of service or treatment facilities to be provided for interim use are reasonable.
- (b) If the commission issues an emergency order under the authority of subsection (a) of this section without a hearing, the order shall fix a time and place for a hearing to be held before the commission which shall be held as soon after the emergency order is issued as is practicable and after such notice as is required under §305.24(a) of this title (relating to Notice).
- (c) This section does not apply to discharges of hazardous waste.

§305.24. Notice.

- (a) Emergency orders relating to the discharge of waste or pollutants may be issued by the commission without prior notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.
- (b) Temporary orders require a hearing before issuance of the order. The commission shall give notice of not less than 20 days before the date set for the hearing on the temporary order to all affected persons, and to all persons as may be required by law.
- (c) The requirements of the Texas Water Code, §26.022, relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held for an emergency order, but such general notice of the hearing shall be given as the commission considers practicable under the circumstances.
- (d) This section does not apply to discharges of hazardous waste.

§305.25. Executive Director Authorizations to Discharge. If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility into or adjacent to water in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility, that there are no feasible alternatives to the discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant. If the executive director issues an authorization

Subchapter B
Emergency Orders, Temporary Orders
and Executive Director Authorizations
§§305.21-305.30

These sections are promulgated under Texas Water Code, §§5.103 and 5.105, which provide the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.21. Emergency Orders and Temporary Orders Authorized. The commission may issue emergency orders or temporary orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, whether or not the discharge is covered by a waste discharge permit, when necessary to enable action to be taken more expeditiously than is otherwise provided by the Texas Water Code, Chapter 26 to effectuate the policy and purposes of that chapter.

§305.22. Application for Orders or Authorizations to Discharge.

- (a) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, into or adjacent to water in the state shall submit a sworn application to the commission containing the following information and any other information the commission may reasonably require:
 - (1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;
 - (2) a statement that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;
 - (3) an estimate of the dates on which the proposed discharge will begin and end;
 - (4) a statement of the volume and quality of the proposed discharge;
 - (5) an explanation of measures proposed to minimize the volume and duration of the discharge;

to discharge under this authority, the commission shall hold a hearing as provided for in §305.23(b) of this title (relating to Emergency Orders) as soon as practicable but in no event later than 10 days after issuance of the authorization, to affirm, modify or set aside the authorization. This section does not enable the executive director to authorize the discharge of hazardous waste.

§305.26. Hearings for Temporary Orders, Executive Director Authorizations and Emergency Orders.

- (a) At the hearing for an executive director authorization or commission emergency order, the commission shall affirm, modify or set aside the authorization or emergency order. For any hearing on a temporary order, executive director authorization or emergency order the following procedures will apply:
 - (1) Parties will be designated by the commission. To be designated as a party, the person seeking party status must show a justiciable interest. For each hearing under this section, the applicant, the public interest advocate of the commission and the executive director of the commission are designated as parties by rule.
 - (2) The testimony of all witnesses will be under oath, with an opportunity for questioning by the commission and cross-examination by the other parties.
 - (3) Other parties to the hearing will be given an opportunity to present rebuttal evidence and testimony.
 - (4) The applicant will have the burden of proving its need for an authorization or emergency order, and will have the right to open and close the evidentiary parts of the hearing; the fact that the executive director has authorized such discharge under §305.25 of this title (relating to Executive Director Authorizations to Discharge), standing alone, will not constitute evidence of the need for such authorization.
 - (5) The commission will have the right to limit the number of witnesses; to limit the time for direct questioning or cross-examination of a witness; to refuse illustrative and documentary evidence; and to limit argument.
- (b) Before the date set for hearing by the commission to affirm, modify or set aside an executive director authorization, the applicant shall submit a sworn application supporting such authorization, as specified under §305.22(a) of this title (relating to Application for Orders on Authorizations to Discharge).

§305.27. Application Fees.

- (a) The application fee for an emergency order to discharge under §305.23 of this title (relating to Emergency Orders) or for a solid waste activity under §305.29 of this title (relating to Emergency Orders for Solid Waste Activities) or §305.30 of this title (relating to Emergency Actions Concerning Hazardous Waste), or a temporary order under §305.22 of this title (relating to Application for Orders or Authorizations to Discharge) is \$100 plus \$50 to cover the cost of required notice. The fee is payable at the time the application is filed.
- (b) The application fee for an executive director authorization is \$100 plus \$50 to cover the cost of required notice. The fee is payable, along with the sworn application required by §305.22 of this title (relating to Application for Orders or Authorizations to Discharge), before the date of the commission's public hearing to consider the authorization.

§305.28. Renewals of Emergency Orders and Temporary Orders. The duration of any discharge emergency order or temporary order issued pursuant to this chapter shall not exceed 180 days, but the orders may be renewed one time upon proper application. Applications for renewal may be filed with the commission, along with payment of the application fee. Renewal applications will be treated as new applications and the temporary order application procedures of this chapter will be followed.

§305.29. Emergency Orders for Solid Waste Activities.

- (a) The commission may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of solid waste management within its jurisdiction, whether such activity is covered by a permit or not, if the commission determines that an emergency exists requiring immediate action to protect the public health and safety or the environment. The order may be issued without notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.
- (b) If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing to be held by the commission in accordance with commission rules, so as to affirm, modify, or set aside the emergency order.
- (c) The requirements of the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4), relating to public notice do not apply to a hearing to affirm, modify or set aside an emergency order issued under this section, but such general notice of the

hearing shall be given in accordance with commission rules.

- (d) Any emergency order issued under this section shall not exceed 90 days in duration but may be renewed.

§305.30. Emergency Actions Concerning Hazardous Waste.

- (a) Whenever there is good reason to believe that the storage, processing, or disposal of hazardous waste should be authorized in order to alleviate an imminent and substantial endangerment to human health or safety or the environment and if there are no alternative, permitted facilities that are reasonably available for the proper management of the waste, the commission, on its own motion or the request of the executive director or any other party, may issue an emergency order authorizing the processing, storage, or disposal of the hazardous waste at a non-permitted facility or at a permitted facility with no authorization under its permit to receive the hazardous waste in need of immediate management.
- (b) A party, other than the executive director, requesting an emergency order approving the storage, processing or disposal of hazardous waste, shall file a written request with the executive director setting forth the reason for the request including a description of the imminent and substantial endangerment to human health or safety or the environment, and alternatives investigated.
- (c) The executive director shall review the request and may require the applicant for an emergency order to supply additional information as may be reasonably required to assist the commission in making the necessary findings set out in subsection (a) of this section.
- (d) The executive director shall forward the request for an emergency order and the executive director's recommendation, including any proposed emergency order and findings to the commission.
- (e) Any emergency order issued by commission under this section:
 - (1) shall not exceed 90 days in duration;
 - (2) shall clearly specify the hazardous wastes to be received, and the manner and location of their processing, storage, or disposal;
 - (3) may be terminated by the commission at any time without notice and hearing if it determines that termination is appropriate to protect human health or the environment; and
 - (4) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and

Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

- (f) Public notice shall accompany the emergency order. The notice shall allow at least 45 days for public comment and shall be given at least 30 days before the hearing on the emergency order. Public notice of the emergency order may be given at the same time as public notice and opportunity for comment on the emergency order, and the two notices may be combined. If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing to be held by the commission in accordance with the commission rules, so as to affirm, modify, or set aside the emergency order. The notice shall include:

- (1) the name and address of the applicant;
- (2) the name and location of the hazardous waste management facility;
- (3) a brief description of the wastes involved;
- (4) a brief description of the action authorized or to be authorized, and the reasons for authorization;
- (5) the duration of the emergency order; and
- (6) the name and address of the commission (the office granting the emergency order).

Subchapter C
Application for Permit
§§305.41-305.53

These sections are promulgated under Texas Water Code, §§5.103 and 5.105, which provide the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.41. Applicability. The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under the Texas Water Code, Chapters 26, 27 and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

§305.42. Application Required.

- (a) Any person who is required to obtain a permit, or who requests an amendment 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) (relating to Permit Required) and the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(f)(2) 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 permit application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7 or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §6901 et seq., that render the facility subject to the requirement to 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.

\$305.43. Who Applies.

- (a) It is the duty of the owner of a facility 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.

\$305.44. Signatories to Applications.

- (a) Except as provided in §305.50(9), all applications shall be signed as follows:
 - (1) for a corporation: by a principal executive officer of at least the level of vice-president or a duly authorized representative if such representative is responsible for the overall operation of the facility. A representative shall submit in writing proof of the authorization;
 - (2) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - (3) for a municipality, state, federal, or other public agency: by either a principal executive officer or a ranking official.
- (b) Except as provided in §305.50(10), a person signing an application shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of civil penalty and criminal fine."
- (c) For hazardous solid waste permit applications, the owner and operator of a facility must sign the application.

\$305.45. Contents of Application for Permit.

- (a) Forms for permit applications will be made available by the executive director. Each application for permit shall include the following:
 - (1) the name, mailing address, and location of the facility for which the application is submitted;
 - (2) the ownership status as federal, state, private, public, or other entity;
 - (3) the applicant's name, mailing address, and telephone number;
 - (4) a brief description of the nature of the business;

- (5) the activities conducted by the applicant which require a permit;
- (6) a topographic map, ownership map, county highway map, or a map prepared by a registered professional engineer or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8- $\frac{1}{2}$ 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) other environmental permits;
- (8) supplementary technical report. A supplementary technical report shall be submitted in connection with an application. The report shall be prepared either by a Texas registered professional engineer, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report shall include the following:
 - (A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;
 - (B) for each outfall, injection well, place of deposit, or place of disposal:
 - (i) the volume and rate of disposal of the defined waste or of fluid injection, including appropriate averages, the maximum rates of disposal or injection over representative periods of time, and detailed information regarding patterns of disposal or injection; and
 - (ii) the physical and chemical properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radioactive properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved;
 - (C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to

Additional Requirements for an Application for a Solid Waste Permit), and §305.48 of this title (relating to Additional Contents of Applications for Waste Discharge Permits).

- (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.

§305.46. Designation of Material as Confidential.

- (a) Certain material submitted to the commission may be determined to be confidential and withheld from public review. The applicant shall identify any material for which confidentiality is requested.
- (b) Each claim of confidentiality must be made upon submission of the material with the application, or the material will be considered available for public review.
- (c) Reasons of confidentiality include the protection of trade secrets and similar interests which give a person the right to preserve confidentiality of commercial information in order to obtain or retain advantages from any proprietary right in the information. This includes authorizations under 5 United States Code §552(b)(4), 18 United States Code §1905, and special rules cited in 40 Code of Federal Regulations §§2.301-2.309.
- (d) The executive director will review each claim of confidentiality. If a claim is not approved, the applicant will be notified and informed whether the material is essential to the application. The applicant may elect to withdraw any material submitted with an application. If the applicant elects to withdraw certain material which the executive director has determined is not confidential, such material will be withheld from public review until withdrawn. Any information withdrawn by or returned to the applicant under this provision shall not be considered by the commission in its decision to grant or deny the application, or by the executive director in preparing a draft permit.
- (e) The name and address of an applicant or permittee will not be considered confidential.
- (f) For injection well applications, information which deals with the existence, absence or levels of contaminants in drinking water will not be considered confidential.
- (g) This section shall not be construed so as to make confidential any effluent data, including effluent data in permits, draft permits, and permit applications; nor

shall this section be construed so as to preclude necessary discovery of relevant information by any party to a contested hearing before the commission.

§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.

§305.48. Additional Contents of Applications for Wastewater Discharge Permits. The following shall be included in an application for a wastewater discharge permit.

- (1) The original and one copy of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of copies of all technical supplements and attachments.
- (2) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information.
- (3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes.

§305.49. Additional Contents of Application for an Injection Well Permit.

(a) The following shall be included in an application for an injection well permit:

- (1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);
- (2) for Class III wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.122 of this title (relating to Class III wells);
- (3) the manner in which compliance with the financial responsibility requirement of §305.153 of this title (relating to Financial Responsibility) will be attained;
- (4) a plugging and abandonment plan;

- (5) 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;
 - (6) for Class III wells, a description of all liquid and solid non-radioactive wastes resulting from mining activities;
 - (7) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and
 - (8) any other information reasonably required by the executive director to evaluate the proposed injection well or project.
- (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.

§305.50. Additional Requirements for an Application for a Solid Waste Permit. Unless otherwise stated, an application for a permit to store, process or dispose of solid waste shall meet the following requirements.

- (1) Six copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of copies of all required exhibits.
- (2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health and solid waste statutes.
- (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.
- (4) 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 §§270.13-270.21, except that closure cost estimates shall be prepared in accordance with 40 Code of Federal Regulations §§264.142(a)(1), (a)(3), (a)(4), (b) and (c) and §335.178 of this title (relating to Cost Estimate for Closure). At any time after the effective date of the requirements contained in Subchapter F of Chapter 335 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 Code of Federal Regulations §§270.14-270.21. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.
 - (5) An application for a new hazardous waste landfill which is filed after January 1, 1986 must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.
 - (6) An application for a new hazardous waste landfill, land treatment facility or surface impoundment which is filed after January 1, 1986 which is to be located in the apparent recharge zone of a regional aquifer must include a hydro-geologic 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) All applications for hazardous waste permits shall be signed as follows:
- (A) 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 decisionmaking 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.
 - (B) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.
 - (C) 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).

- (10) For hazardous waste permit applications, the 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."

§305.51. Revision of Applications for Hazardous Waste Permits.

- (a) Owners or operators of hazardous waste management facilities, who filed a Part A permit application pursuant to 40 Code of Federal Regulations §270.10 and have not yet filed a Part B application, shall file a revised Part A application with the executive director if:
 - (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; or
 - (4) changes in the ownership or operational control of a facility are made.
- (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.

§305.52. Waste Containing Radioactive Materials. An application which involves the disposal of a waste containing radioactive materials shall be accompanied by a letter or other instrument in writing from the Texas Department of Health, stating either that the applicant, or the person delivering the waste containing radioactive materials for disposal by the applicant, has a license from the Texas Department of Health governing the disposal of radioactive materials; or that the applicant or the person served by the applicant does not need such a license.

§305.53. Application Fees.

- (a) Except as specifically provided hereunder, an applicant shall include with each application a fee of \$100.
 - (1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is \$25. The fee for each disposal well which will be authorized to receive hazardous waste is \$2,000.
 - (2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than \$2,000 and not more than \$50,000 as calculated in accordance with the following:
 - (A) site evaluation - \$100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;
 - (B) process analysis - \$1,000;
 - (C) facility unit(s) analysis - \$500 per unit;
 - (D) management/facility analysis - \$500.
 - (3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the \$500 per unit fee; except that multiple storage tanks or container storage areas identical in type and use will be subject to a single \$500 unit fee.
 - (4) The fees established by this section are due at the time that the application is filed in

accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection, fees under paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas Water Commission for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees pursuant to paragraph (2) of this subsection are paid.

- (b) An applicant shall also include with each application for a new or amended permit a fee of \$50.00 to be applied toward the cost of providing required notice. A fee of \$15.00 is required with each application for renewal.

§§305.61-305.68

Subchapter D
Amendments, Renewals, Transfers, Corrections,
Revocation, and Suspension of Permits
§§305.61-305.68

These sections are promulgated under the Texas Water Code, §§5.103 and 5.105, which provide the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.61. Applicability. The provisions of this subchapter set forth the standards and requirements for applications and actions concerning amendments, renewals, transfers, corrections, revocations and suspensions of permits.

§305.62. Amendment.

- (a) Causes for amendment. Except as provided in §305.65 of this title (relating to Corrections of Permits), a change in a term, condition, or provision of a permit requires an amendment. The permittee or an affected person may request an amendment to a permit. If the permittee requests an amendment, the application shall be processed in accordance with Chapter 281 of this title (relating to Applications Processing). If an affected person requests an amendment, such request shall be submitted to the executive director for review. If the executive director determines such a request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting such amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that such a request is justified, the amendment will be processed in accordance with subsections (d) and (f) of this section.
- (b) Application for amendment. An application for an amendment to a permit shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in §§305.41-305.53 of this title (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.
- (c) Types of amendments.
 - (1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

- (2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid, if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge or injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause a potential deterioration of quality of water in the state nor relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment also includes but is not limited to the following:

- (A) changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;
- (B) requiring more frequent monitoring or reporting by the permittee;
- (C) for solid waste permits, the following changes:
 - (i) change in the estimates of maximum inventory under 40 Code of Federal Regulations §264.112(a)(2);
 - (ii) change in the estimates of expected year of closure or schedules for final closure under 40 Code of Federal Regulations §264.112(a)(4);
 - (iii) extension of periods longer than 90 days or 180 days under 40 Code of Federal Regulations §264.113(a) and (b);
 - (iv) change in the ranges of the operating requirements set in the permit to reflect the results of a trial burn, provided that the change is minor;
 - (v) a minor change to the operating requirements set in the permit for conducting a trial burn;
 - (vi) an extension of the time period for determining operational readiness following completion of construction, for up to 720 hours operating time for treatment of hazardous waste;

*Language missing:
"change the operating
requirements set in the
permit for conducting
a trial burn, provided
that the change
is minor."*

- (vii) change in the treatment program requirements for land treatment units under 40 Code of Federal Regulations §264.271 to improve treatment of hazardous constituents, provided that the change is minor;
 - (viii) a minor change to any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analysis);
 - (ix) authorization for a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by 40 Code of Federal Regulations §264.272(a), provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration; or
 - (x) change in ownership or operational control of a facility where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the executive director and provided that the requirements of §305.64 of this title (relating to Transfer of Permits) have been satisfied.
- (d) Good cause for amendments. The executive director may initiate and the commission may order an amendment to a permit if good cause exists. Good cause includes but is not limited to the following:
- (1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;
 - (2) information, not available at the time of permit issuance, is received by the executive director, and such information justifies amendment of existing permit conditions;

- (3) the standards or regulations on which the permit or a permit condition was based have been changed by new standards or regulations or by judicial decision;
- (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 permits to store, process or dispose of hazardous waste:
 - (A) when modification of a closure plan is required under 40 Code of Federal Regulations §264.112(b) or 264.118(b);
 - (B) after the executive director receives the modification of expected closure under 40 Code of Federal Regulations §264.113, when the executive director determines that extension of the 90- or 180-day periods under 40 Code of Federal Regulations §264.113, modification of the 30-year post-closure period under 40 Code of Federal Regulations §264.117(a), continuation of security requirements, or permission to disturb the integrity of the containment system under 40 Code of Federal Regulations §264.117(c) are warranted;
 - (C) when the permittee has filed a request under 40 Code of Federal Regulations §264.147(d) for a variance to the level of financial responsibility or when the executive director demonstrates under 40 Code of Federal Regulations §264.147(e) that an upward adjustment of the level of financial responsibility is required;
 - (D) to include a detection monitoring program meeting the requirements of §335.164 of this title (relating to Detection Monitoring Program), when the owner or operator has been conducting a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program) or a corrective action program under §335.166 of this title (relating to Corrective Action Program) and the compliance period ends before the end of the post-closure care period for the unit;
 - (E) to include conditions applicable to units at a facility that were not previously included in the facility's permit; or

- (F) when a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.
- (e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).
- (f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.
- (g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.
- (h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

§305.63. Renewal. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, any hazardous waste management facility 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 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.

§305.64. Transfer of Permits.

- (a) A permit is issued in personam and may be transferred only upon approval of the commission. An attempted transfer is not effective for any purpose until actually approved by the commission.
- (b) Except as provided otherwise in subsection (g), the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:
 - (1) name and address of the transferee;
 - (2) date of proposed transfer;
 - (3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility including proof of such financial responsibility to become effective when the transfer becomes effective;

- (4) a fee of \$100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fees); and
 - (5) 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 transferor 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 Civil Statutes, Article 4477-7, changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 Code of Federal Regulations Part 264, Subpart H, as adopted by reference in §335.152(a)(6), until the new owner or operator has demonstrated to the executive director that he is complying with the requirements of 40 Code of Federal Regulations Part 264, Subpart H. The new owner or operator must demonstrate compliance with 40 Code of Federal Regulations Part 264, Subpart H requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with 40 Code of Federal Regulations Part 264, Subpart H, the executive director shall notify the old owner or operator in writing that he no longer needs to comply with 40 Code of Federal Regulations Part 264, Subpart H as of the date of demonstration.

§305.65. Corrections of Permits. The commission may make corrections to permits, either by reissuing the permit or by issuing an endorsement to the permit, without the necessity of observing the formal amendment procedures prescribed in this chapter:

- (1) to correct a clerical or typographical error;
- (2) to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;
- (3) to describe more accurately the character, quality or quantity of any waste authorized to be disposed of;
- (4) to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of; or
- (5) to state more accurately any provision in a permit without changing the substance of any such provision.

§305.66. Revocation and Suspension.

- (a) A permit or other order of the commission does not become a vested right and may be revoked or suspended for good cause at any time by order of the commission after opportunity for a public hearing is given. Good cause includes, but is not limited to, the following:
 - (1) the permittee has failed or is failing to comply with the conditions of the permit or a commission order, including failure to construct, during the life of the permit, facilities necessary to conform with the terms and conditions of the permit;
 - (2) the permit or the operations thereunder, have been abandoned;
 - (3) the permit or other order is no longer needed by the permittee;
 - (4) the permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time;
 - (5) a determination that the permitted activity endangers human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm;
 - (6) the facility is being operated by a transferee before commission approval of the transfer;
 - (7) for Class III injection wells, failure to achieve satisfactory restoration progress; or
 - (8) 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 Texas Water Code, §26.084.
- (c) The commission may 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 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.

§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.

§305.68. Action and Notice on Petition for Revocation or Suspension.

- (a) In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the commission, notice of which shall be given to the permittee not less than 30 days prior to the hearing by certified mail, return receipt requested, of the time and place of the hearing. For permits or orders involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, public notice shall be given by publication, by mail and by radio broadcast, in accordance with §§305.102-305.104 of this title (relating to Notice by Publication; Notice by Mail; and Radio Broadcasts).
- (b) If the permittee requests or consents to the revocation or suspension of the permit and the executive director has not revoked or suspended the permit, the commission may take action at a regular meeting of the commission without holding a public hearing, provided notice of the hearing is given by first-class mail at least 10 days prior to the meeting. For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, notice of the hearing shall be given by first-class mail at least 30 days prior to the meeting.

Subchapter E
Actions, Notice and Hearing
§§305.91-305.106

These sections are promulgated under the Texas Water Code, §§5.103 and 5.105, which provide the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.91. Applicability. This subchapter sets forth the manner in which action will be taken on applications filed with the commission.

§305.92. Action on Applications. The commission may conduct a public hearing on any application. The commission shall conduct a public hearing on an application for permit, major amendment or renewal covered by this chapter, if a request for hearing is made by a commissioner, the executive director, or an affected person who objects to the application and files a request in accordance with commission rules. If a hearing is held, notice of hearing shall be given by publication and by mail, as required by law.

§305.93. Action on Application for Permit.

- (a) Except as provided in subsection (b) of this section, the commission may take action on an application at a regular meeting without holding a public hearing, provided:
 - (1) at least 30 days prior to the regular meeting at which action is to be taken, notice of the application has been given by publication and by mail as required by law; and,
 - (2) within the 30-day period after the first publication of the notice, no request for a public hearing has been made by a commissioner, the executive director, or an affected person.
- (b) The time limits of subsection (a) of this section shall be 45 days for applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.
- (c) For any application involving an average daily discharge of five million gallons or more, notice shall be given not less than 20 days prior to commission action on the application, to each county judge of the county or counties located within 100 statute miles of the point of discharge who has requested in writing that such notice be given; and through which water, into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

§305.94. Action on Application for Production Area Authorization. The commission may take action on an application for production area authorization at a regular meeting without a public hearing provided notice of the application has been given by first-class mail at least 10 days prior to the meeting.

§305.95. Action on Application for Renewal.

- (a) Except as provided in subsections (b) and (c) of this section, the commission may take action on an application for renewal in the manner prescribed by §305.93 of this title (relating to Action on Applications).
- (b) The commission shall conduct a public hearing on an application for renewal if the executive director has recommended denial, unless the permittee files sufficient consent and waiver of hearing, in which case the provisions of subsection (a) of this section apply.
- (c) The commission may take action on an application to renew a permit for a confined animal feeding operation within the definition of the Texas Water Code, §26.028(c), at a regular meeting without the necessity of holding a public hearing provided notice of the application is given to persons as required by law by first-class mail at least 10 days prior to the meeting.

§305.96. Action on Application for Amendment.

- (a) Except as provided in subsection (c) of this section, the commission may take action on application for a major amendment in the manner prescribed by §305.93 of this title (relating to Action on Application for Permit).
- (b) The commission may take action on an application for minor amendment at a regular meeting of the commission without holding a public hearing, provided notice of the application is given to persons as required by law by first-class mail at least 10 days prior to the meeting.
- (c) The commission shall conduct a public hearing on a petition for a major amendment, unless no person requests a hearing and the permittee files sufficient consent and waiver of hearing, in which case the provisions of subsection (a) of this section apply.

§305.97. Action on Application for Transfer. The commission may approve a transfer by order at a regular meeting of the commission.

§305.98. Scope of Proceedings. The commission may limit consideration in permit renewal or amendment proceedings, to only those portions or provisions of a permit for which the application or petition requests action. All terms, conditions and provisions of an existing permit remain in full force and

effect during such proceedings, and the permittee shall comply with an existing permit until a new or amended permit is issued.

§305.99. Commission Action.

- (a) The commission may grant or deny an application or petition in whole or in part, suspend the authority to conduct an activity or disposal of waste for a specified period of time, dismiss the proceedings, amend a permit or other order, or take any other action as may be appropriate. For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the commission may issue or deny a permit for one or more units at the facility. The interim status of any facility unit compliant with the provisions of the Texas Solid Waste Disposal Act, §4(f)(2) and §335.2(c) of this title (relating to Permit Required) for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.
- (b) If the commission directs a person to perform or refrain from performing a certain act or activity, there shall be set forth in the order the findings on which the directive is based. The commission may set a compliance deadline in its order to represent a reasonable period of time in which:
 - (1) to terminate the operation or activity;
 - (2) to cease disposal, handling or storage of any waste;
 - (3) to conform to the permit requirements, including any new or additional conditions imposed by the commission; or
 - (4) to otherwise comply with the commission's order.
- (c) The commission may grant an extension of time to a compliance deadline upon application by the permittee for good cause.

§305.100. Notice of Application. A notice of application shall fairly set forth the substance of the application and proposed action, including but not limited to the location and nature of any proposed or existing facility, the location of any point of injection, discharge or place of disposal, the rate of discharge or injection, the method for obtaining additional information about the application, the method for submitting a response or protest to the application and request for a hearing, and such other information necessary to give a fair appraisal of the application. The notice shall state whether a draft permit or a draft solid waste compliance plan has been prepared by the executive director.

§305.101. Notice of Hearing. A notice of hearing shall identify the application, the date, time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, the proposed action, the requirements for submitting written protests, the method for obtaining additional information, and such other information the commission deems necessary. The notice shall state whether a draft permit has been prepared by the executive director. For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the notice shall include a statement that a draft permit for the facility has been prepared and that a copy of the draft permit is available to the public.

§305.102. Notice by Publication.

- (a) If notice by publication is required, the applicant shall cause the notice approved by the commission to be published in a newspaper regularly published, and generally circulated within the county and area wherein the proposed facility or discharge is to be located, and within each county and area wherein persons reside who would be affected by the facility or proposed discharge. For applications for solid waste permits, notice shall be published in each county and area which is adjacent or contiguous to each county wherein the proposed facility or discharge is to be located.
- (b) The date of publication for a notice of application shall be as set forth in this subchapter for each type of action.
- (c) The date of publication for a notice of hearing for any application covered by this chapter shall be not less than 30 days before the date set for hearing.
- (d) The applicant is responsible for the cost of publication. If the applicant does not cause the notice approved by the commission to be published within 30 days of receipt of the notice from the commission, the commission may cause the notice to be published and the applicant shall reimburse the commission for the cost of publication within 30 days of publication.

§305.103. Notice by Mail.

- (a) If notice by mail is required, the commission will transmit the notice by first-class mail to persons listed in subsection (b) of this section and to other persons, who in the judgment of the commission, may be affected. Personal service may be substituted for mailing.

- (b) The notice shall be mailed to the following:
 - (1) the affected landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;
 - (2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;
 - (3) the county judge and health authorities of the county in which the facility is located or in which waste is or will be disposed of;
 - (4) the Texas Department of Health;
 - (5) the Texas Parks and Wildlife Department;
 - (6) the Texas Railroad Commission;
 - (7) for an injection well permit application, the Texas Water Well Drillers Board;
 - (8) the applicant;
 - (9) persons who request to be put on the mailing list, including participants in past commission permit proceedings for the facility or activity who have submitted a written request to be put on the mailing list;
 - (10) State and federal agencies for which notice is required in 40 Code of Federal Regulations §124.10(c);
 - (11) any other person the commission may elect to include; and
 - (12) county judges as required by §305.93(c) of this title (relating to Action on Application for Permit).
- (c) The date of mailing for a notice of application shall be as set forth in this subchapter for each type of action.
- (d) The date of mailing for a notice of hearing shall be at least 30 days before the date set for hearing.
- (e) The applicant is responsible for the cost of required notice.

§305.104. Radio Broadcasts. For an application to store, process, or dispose of hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the applicant shall cause the public notice prepared by the commission to be broadcast over one or more local radio stations which are located in the affected area of a pending hazardous waste permit application. For purposes of this section, the affected area is an area to be determined by the commission on each application which includes the county in which the site is to be located and may include contiguous counties at the discretion of the commission. If the applicant does not cause the notice approved by the commission to be broadcast in the affected area within 30 days of receipt of the notice from the commission, the commission may cause the notice to be broadcast

- (b) The notice shall be mailed to the following:
 - (1) the affected landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;
 - (2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;
 - (3) the county judge and health authorities of the county in which the facility is located or in which waste is or will be disposed of;
 - (4) the Texas Department of Health;
 - (5) the Texas Parks and Wildlife Department;
 - (6) the Texas Railroad Commission;
 - (7) for an injection well permit application, the Texas Water Well Drillers Board;
 - (8) the applicant;
 - (9) persons who request to be put on the mailing list, including participants in past commission permit proceedings for the facility or activity who have submitted a written request to be put on the mailing list;
 - (10) State and federal agencies for which notice is required in 40 Code of Federal Regulations §124.10(c);
 - (11) any other person the commission may elect to include; and
 - (12) county judges as required by §305.93(c) of this title (relating to Action on Application for Permit).
- (c) The date of mailing for a notice of application shall be as set forth in this subchapter for each type of action.
- (d) The date of mailing for a notice of hearing shall be at least 30 days before the date set for hearing.
- (e) The applicant is responsible for the cost of required notice.

§305.104. Radio Broadcasts. For an application to store, process, or dispose of hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the applicant shall cause the public notice prepared by the commission to be broadcast over one or more local radio stations which are located in the affected area of a pending hazardous waste permit application. For purposes of this section, the affected area is an area to be determined by the commission on each application which includes the county in which the site is to be located and may include contiguous counties at the discretion of the commission. If the applicant does not cause the notice approved by the commission to be broadcast in the affected area within 30 days of receipt of the notice from the commission, the commission may cause the notice to be broadcast

Subchapter F
Permit Characteristics and Conditions
§§305.121-305.128

These sections are promulgated under Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.121. Applicability. The provisions of this subchapter establish the characteristics and standards for permits issued for injection wells, waste discharges and solid waste management.

§305.122. Characteristics of Permits.

- (a) 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.
- (b) The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

§305.123. Reservation in Granting Permit. Every permit is subject to further orders and rules of the commission. In accordance with the procedures for amendments and orders, the commission may incorporate into permits already granted, any condition, restriction, limitation, or provision reasonably necessary for the administration and enforcement of Texas Water Code Chapters 26, 27, and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

§305.124. Acceptance of Permit, Effect. Acceptance of the permit by the person to whom it is issued constitutes an acknowledgement 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.

§305.125. Standard Permit Conditions. The following conditions are applicable to all permits issued within the scope of this chapter, and shall be incorporated into each permit expressly or by reference to this chapter.

- (1) The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Solid Waste Disposal Act, and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal

- application or of an application for a permit for another facility.
- (2) The permittee must apply for an amendment or renewal prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity will terminate upon the effective denial of said application.
 - (3) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
 - (4) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.
 - (5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.
 - (6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the executive director, upon request, copies of records required to be kept by the permit.
 - (7) The permittee shall give notice to the executive director prior to physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.
 - (8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.
 - (9) Unless specified otherwise, the permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment. Report of such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission of such information shall also be provided within five working days of the time the permittee becomes aware of the noncompliance.

The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

- (10) Inspection and entry shall be allowed as prescribed in the Texas Water Code, Chapters 26, 27 and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §7.
- (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) Monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, and the certification required by 40 Code of Federal Regulations §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, or certification. This period may be extended at the request of the executive director.
 - (C) Records of monitoring activities shall include the following:
 - (i) date, time and place of sample or measurement;
 - (ii) identity of individual who collected the sample or made the measurement;
 - (iii) date of analysis;
 - (iv) identity of the individual and laboratory who performed the analysis;
 - (v) the technique or method of analysis; and
 - (vi) the results of the analysis or measurement.
- (12) Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the executive director as promptly as possible.
- (13) A permit may be transferred only according to the provisions of §305.64 of this title (relating to Transfer of Permits) and §305.97 of this title (relating to Action on Application for Transfer).

- (14) All reports and other information requested by the executive director shall be signed by the person and in the manner required by §305.128 of this title (relating to Signatories to Reports).
- (15) A permit may be amended, suspended and reissued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- (16) A permit does not convey any property rights of any sort, or any exclusive privilege.
- (17) Monitoring results shall be provided at the intervals specified in the permit.
- (18) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.
- (19) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the executive director, it shall promptly submit such facts or information.

§305.126. Additional Standard Permit Conditions for Waste Discharge Permits. Whenever flow measurements for any sewage treatment facility in the state reaches 75 percent of the permitted average daily flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever, the average daily flow reaches 90 percent of the permitted average daily flow for three consecutive months, the permittee shall obtain necessary authorization from the Texas Water Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75 percent of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If in the judgment of the executive director the population to be served will not cause permit noncompliance, then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the water quality division of the Texas Water 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.

§305.127. Conditions to be Determined for Individual Permits. The following conditions are to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable shall be incorporated into the permit expressly or by reference.

(1) Duration.

(A) Injection well permits.

- (i) Permits for Class I wells shall be effective for a fixed term not to exceed 10 years.
- (ii) Permits for Class III wells or projects may be effective for the life of the well or project, and shall be reviewed at least once every five years.

(B) Solid waste permits.

- (i) Hazardous waste permits shall be effective for a fixed term not to exceed ten years.
- (ii) Other solid waste permits may be effective for the life of the project.
- (iii) Each permit for a land disposal facility used to manage hazardous waste shall be reviewed by the executive director five years from the date of permit issuance or reissuance and shall be modified as necessary by the commission, as provided in §305.62(e) of this title (relating to Amendment).

(C) Waste discharge permits.

- (i) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be effective for a term not to exceed five years.
- (ii) Confined animal feeding operation permits may be effective for the life of the project.
- (iii) Other wastewater permits, including permits which regulate no-discharge systems, shall be effective 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 effective 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 that is less than the full allowable term under this section.
- (2) Monitoring, recording and reporting.
 - (A) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods shall be specified by the commission as appropriate.
 - (B) The type, intervals and frequency of monitoring shall be set to yield data representative of the monitored activity, at a minimum as specified in commission rules for monitoring and reporting.
 - (C) Other requirements for monitoring and reporting shall be set at a minimum as specified in commission rules for monitoring and reporting.
- (3) Schedule of compliance.
 - (A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate act, and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit.
 - (B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set wherever practicable. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into interim 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.
 - (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.
- (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 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, and to Chapter 309 of this title (relating to Effluent Standards) for waste discharge standards, and to Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards.
- (B) Any statutory or regulatory requirement which takes effect prior to final administrative disposition of an application for a permit or prior to the amendment or suspension and reissuance of a permit shall be included in the permit.
 - (C) New, amended, or renewed permits shall incorporate any applicable requirements contained in Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, Chapter 309 of this title (relating to Effluent Standards) (waste discharge standards) and Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards.
- (5) Wastes authorized.
- (A) Injection well permits. Each category of waste to be disposed of by injection well shall be authorized in the permit.
 - (B) Drilled or Mined Shaft Permits. Each category of waste to be handled, stored, processed, or disposed of in a drilled or mined shaft, or in associated surface facilities shall be authorized in the permit.
 - (C) Unauthorized wastes. Wastes not authorized by permit are prohibited from being transported to, stored, and processed or disposed of in a permitted facility.
- (6) Permit conditions. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to

the applicable rules or requirements must be given in the permit.

§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 person described in §305.50(9) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit), 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) or described in §305.50(9) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit);
 - (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) For matters involving hazardous waste, any person signing a report required by a permit shall make the certification set forth in §305.50(10) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

Subchapter G
Additional Conditions for Solid Waste
Storage, Processing or Disposal Permits
§§305.141-305.146

These sections are adopted under Texas Water Code, §§5.103 and 5.105, which provide the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.141. Applicability.

- (a) Unless otherwise stated, the conditions contained in this subchapter apply to all 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").

§305.142. Duty to Comply. The permittee need not comply with the conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency order issued by the commission.

§305.143. Recordkeeping. For those permits containing a groundwater monitoring requirement, the permittee shall maintain records from all groundwater monitoring wells and associated

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 - (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").

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§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.

§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, 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.

§305.145. Release or Discharges of Solid Waste.

(a) The following shall be included as information which must be reported orally within 24 hours pursuant to §305.125(9) of this title (relating to Standard Permit Conditions):

- (1) information concerning release of any solid waste that may cause an endangerment to public drinking water supplies;
- (2) any information of a release or discharge of solid waste, or of a fire or explosion from a facility, which could threaten the environment or human health or safety outside the facility. The description of the occurrence and its cause shall include:
 - (A) name, address, and telephone number of the owner or operator;
 - (B) name, address, and telephone number of the facility;
 - (C) date, time and type of incident;
 - (D) name and quantity of material(s) involved;
 - (E) the extent of injuries, if any;
 - (F) an assessment of actual or potential hazards to the environment and human health or safety outside the facility, where this is applicable; and

- (G) estimated quantity and disposition of recovered material that resulted from the incident.
- (b) The executive director may waive the five-day written notice requirement under §305.125(9) of this title (relating to Standard Permit Conditions) in favor of a written report pursuant to this section within 15 days.

§305.146. Reporting. The following reports shall be submitted:

- (1) manifest discrepancy report required by §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); if a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within 15 days, the permittee must submit a letter report including a copy of the manifest to the executive director. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I industrial hazardous or non-hazardous solid waste.);
- (2) waste report required by §335.15(c) of this title (relating to Record-Keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); a waste report must be submitted to the executive director on a monthly basis. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I hazardous or non-hazardous industrial solid waste.)
- (3) annual report required by §335.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators) and §335.71 of this title (relating to Annual Reporting); an annual report must be submitted covering facility activities during the previous calendar year;
- (4) monthly summary required by §335.15(b) of this title (relating to Record-Keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §335.154 of this title (relating to Reporting Requirements for Owners and Operators); a monthly summary must be submitted covering facility activities during the previous calendar year. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I waste hazardous or non-hazardous industrial solid waste.)

Subchapter H
Additional Conditions for Injection Well Permits
§§305.151-305.159

These sections are adopted under Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.151. Applicability. Unless stated otherwise, the following conditions apply to all Class I and Class III injection well permits and shall be incorporated into the permit expressly or by reference. The commission may require such conditions for Class V injection well permits as are necessary to prevent pollution of fresh water. These conditions are in addition to those set forth in §§305.121-305.128 of this title (relating to Permit Characteristics and Conditions).

§305.152. Corrective Action.

- (a) For such wells within the area of review which are inadequately constructed, completed, or abandoned, and which as a result of the injection activities may cause the pollution of fresh water, the commission shall prescribe or incorporate into the permit a condition requiring corrective action adequate to prevent such pollution. Corrective action will be required unless the owner or operator demonstrates to the executive director that, despite the owner or operator's best efforts, he is unable to obtain the necessary permission to undertake such action.
- (b) The criteria of §331.44 of this title (relating to Corrective Action Standards) will be used to determine adequacy.
- (c) A permit issued for an existing injection well requiring corrective action may include a compliance schedule prescribing the time within which the corrective action must be completed.
- (d) As part of the corrective action plan, the commission may impose an injection pressure limitation that does not cause the pressure in the injection zone to exceed hydrostatic pressure in those wells described in subsection (a) of this section, which condition shall expire upon adequate completion of all corrective action measures.
- (e) Action prescribed by a corrective action plan for new wells or new areas must be completed to the satisfaction of the executive director before operation of the well begins.

- (f) In the event that, after an authorization for injection has been granted, additional information is submitted or discovered that a well within the applicable area of review might pose a hazard to a freshwater aquifer, the commission may prescribe a corrective action plan and compliance schedule as a condition for continued injection activities.

\$305.153. Financial Responsibility.

- (a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. The definitions are intended to represent the common meanings of the terms as they are generally used by the business community.
 - (1) Assets - all existing and all probable future economic benefits obtained or controlled by a particular entity.
 - (2) Current assets - cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.
 - (3) Current closure cost estimate - the dollar amount of financial assurance currently approved by the commission to ensure the proper closing, plugging and abandoning of injection operations.
 - (4) Current liabilities - obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.
 - (5) Independently audited - refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.
 - (6) Liabilities - probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.
 - (7) Net working capital - current assets minus current liabilities.
 - (8) Net worth - total assets minus total liabilities equivalent to owner's equity.
 - (9) Parent corporation - a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility permittee; the latter corporation is deemed a subsidiary of the parent corporation.

- (10) Permittee - the owner and/or operator of injection well facilities authorized by rule or authorized by a valid commission permit.
- (11) Tangible worth - the tangible assets that remain after deducting liabilities; such assets do not include intangibles, such as goodwill, or rights to patents or royalties.
- (b) The permittee shall secure and maintain a performance bond or other equivalent form of financial assurance or guarantee approved by the commission to ensure the closing, plugging and abandonment of the injection operation in the manner prescribed by the commission. The assurance may cover more than one well or operation. For new hazardous waste disposal wells, financial security shall be obtained at least 60 days prior to the commencement of drilling operations for the well. For other injection wells, financial security shall be obtained prior to the injection of fluids.
- (c) An injection well permittee may satisfy the requirements of subsection (b) of this section by qualifying under the financial test as specified in subsections (d) through (n) of this section. To pass this test the permittee must meet the criteria of either subsection (d) or (e) of this section.
- (d) The permittee must have:
 - (1) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;
 - (2) net working capital and tangible net worth each at least six times the sum of the current closure cost estimate;
 - (3) tangible net worth of at least \$10 million; and
 - (4) assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure cost estimate.
- (e) The permittee must have:
 - (1) a current rating for the permittee's most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's;
 - (2) tangible net worth at least six times the sum of the current closure cost estimate;
 - (3) tangible net worth of at least \$10 million; and
 - (4) assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure cost estimate.
- (f) To demonstrate qualification under the financial test specified under either subsection (d) or (e) of this

section, the permittee must submit the following items to the executive director:

- (1) a letter signed by the permittee's chief financial officer and worded as specified in subsection (m) of this section;
- (2) a copy of an independent certified public accountant's report on examination of the permittee's financial statements for the latest completed fiscal year; and
- (3) a report from an independent certified public accountant to the permittee stating that:
 - (A) the independent accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - (B) no matters have come to the attention of the independent accountant which suggest that the specified data should be adjusted.
- (g) After the initial submission of items specified in subsection (f) of this section, the permittee must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all items specified in subsection (f) of this section.
- (h) If the permittee no longer meets the requirements of subsection (c) of this section, the permittee must send notice to the executive director of the permittee's intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the permittee no longer meets the requirements. The permittee must provide the alternate financial assurance within 120 days after the end of such fiscal year.
- (i) The executive director may, based on a reasonable belief that the permittee no longer meets the requirements of subsection (c) of this section, require reports of financial condition at any time from the permittee in addition to those specified in subsection (f) of this section. If the executive director finds, on the basis of such reports or other information, that the permittee no longer meets the requirements of subsection (c) of this section, the permittee must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.
- (j) The executive director may disallow use of the financial test specified in subsections (d) through (n) of this section on the basis of qualifications in the opinion

- expressed by the independent certified public accountant in his report on examination of the permittee's financial statements as required under subsection (f)(2) of this section. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The permittee must provide alternate financial assurance acceptable to the executive director within 30 days after notification of the disallowance.
- (k) A permittee will no longer be required to submit the items specified in subsection (f) of this section when:
- (1) a permittee substitutes alternate financial assurance acceptable to the executive director; or
 - (2) the permittee properly closes, plugs and abandons the permitted injection well in accordance with applicable permit provisions and rules of the commission.
- (1) A permittee may meet the requirements of the financial test specified in subsections (d) through (n) of this section by obtaining a written guarantee, hereinafter referred to as corporate guarantee. The guarantor must meet the requirements for permittees in subsections (d) through (j) of this section and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in subsection (n) of this section. The corporate guarantee must accompany the items sent to the executive director as specified in subsection (f) of this section. The terms of the corporate guarantee must provide that:
- (1) if the permittee fails to properly close, plug and abandon the permitted injection well covered by the corporate guarantee, the guarantor will do so;
 - (2) the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the permittee and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the permittee and the executive director, as evidenced by the return receipts;
 - (3) if the permittee fails to provide alternate financial assurance and obtain the written approval of such alternate financial assurance from the executive director within 90 days after receipt by both the permittee and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the permittee.

- (m) A letter from the chief financial officer, as specified in subsection (f) of this section, must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

(Address to Executive Director, Texas Water Commission, P. O. Box 13087, Capitol Station, Austin, Texas 78711)

I am the chief financial officer of (name and address of permittee). This letter is in support of this firm's use of the financial test to demonstrate financial responsibility required by 31 TAC §305.153.

(Fill out the following two paragraphs regarding facilities and associated closure cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include the commission's permit or control file number, name and address of the facility, and current closure cost estimate.)

1. This firm is authorized by the Texas Water Commission to operate the following injection well facilities for which financial assurance is demonstrated through the TWC financial test. The current closure cost estimates covered by the test are shown for each facility:
2. This firm guarantees, through the attached corporate guarantee, the closure of the following injection well facilities owned or operated by subsidiaries of this firm. The current closure cost estimates so guaranteed are shown for each facility:

This firm (insert "is required" or "is not required") to file a form 10K with the Securities and Exchange Commission for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in appropriate alternatives as most applicable to your firm).

Alternative I

1. Sum of current closure cost estimates (total of all cost estimates shown in the two paragraphs above) \$ _____
 - *2. Total liabilities (if any portion of the closure cost estimates is included in "total liabilities", you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) \$ _____
 - *3. Tangible net worth \$ _____
 - *4. Net worth \$ _____
 - *5. Current assets \$ _____
 - *6. Current liabilities \$ _____
 7. Net working capital (Line 5 minus line 6) \$ _____
 - *8. The sum of net income plus depreciation, depletion and amortization \$ _____
 - *9. Total assets in U. S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____
- | | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
| 10. Is line 3 at least \$10 million? | _____ | _____ |
| 11. Is line 3 at least 6 times line 1? | _____ | _____ |
| 12. Is line 7 at least 6 times line 1? | _____ | _____ |
| *13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 | _____ | _____ |
| 14. Is line 9 at least 6 times line 1? | _____ | _____ |
| 15. Is line 2 divided by line 4 less than 2.0? | _____ | _____ |
| 16. Is line 8 divided by line 2 greater than 0.1? | _____ | _____ |
| 17. Is line 5 divided by line 6 greater than 1.5? | _____ | _____ |

Alternative II

1. Sum of current closure cost estimates (total of all cost estimates shown in the two paragraphs above) \$ _____
2. Current bond rating of most recent issuance of this firm and name of rating service _____
3. Date of issuance of bond _____
4. Date of maturity of bond _____
- *5. Tangible net worth (if any portion of the closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) \$ _____
- *6. Total assets in U. S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____
7. Is line 5 at least \$10 million? _____
8. Is line 5 at least 6 times line 1? _____
- *9. Are at least 90% of firm's assets located in the U.S.? (If not, complete line 10.) _____

10. Is line 6 at least 6 times line 1? _____

(Signature)

(Name)

(Title)

(Date)

- (n) A corporate guarantee, as specified in subsection (1) of this section, must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Corporate Guarantee for Injection Well Closure
Guarantee made this (date) by (name of guarantor entity), a business corporation organized under the laws of the State of (insert name of state), herein referred to as Guarantor, to the Texas Water Commission (hereinafter referred to as TWC), obligee, on behalf of our subsidiary (permittee) of (business address).

Recitals

1. Guarantor meets or exceeds the TWC financial test criteria and agrees to comply with the reporting requirements for Guarantors as required by TWC.

2. (Permittee) owns or operates the following injection well facility(ies) covered by this guarantee: (List for each facility the TWC permit or control file number, name and address).

3. For value received from (permittee), Guarantor guarantees to TWC that in the event that (permittee) fails to close, plug and abandon the above facility(ies) in accordance with applicable permit provisions and/or TWC rules whenever so required, the Guarantor shall do so upon request of TWC.

4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the Guarantor fails to meet the financial test criteria, Guarantor shall send within 90 days, by certified mail, notice to the TWC executive director and to (permittee) that guarantor intends to provide alternate financial assurance as required by 31 TAC §305.153 in the name of (permittee). Within 120 days after the end of such fiscal year, the Guarantor shall establish such financial assurance unless (permittee) has done so.

5. The Guarantor agrees to notify the TWC executive director by certified mail of any voluntary or involuntary proceeding under Title 11 United States Code, naming Guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees that within 30 days after being notified by the TWC executive director of a determination that Guarantor no longer meets the financial test criteria or that Guarantor is disallowed from continuing as a guarantor of closure or post-closure

care, Guarantor shall establish alternate financial assurance as required by 31 TAC §305.153 in the name of (permittee) unless (permittee) has done so.

7. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plans, amendment or modification of the permit, the extension or reduction of the time of performance of closure, or any other modification or alteration of an obligation of the permittee pursuant to the rules of the commission.

8. Guarantor agrees to remain bound under this guarantee for so long as (permittee) must comply with the applicable requirements of 31 TAC §305.153 for the above listed injection well facility(ies), except that Guarantor may cancel this guarantee by sending notice by certified mail to the executive director of the commission and to (permittee), such cancellation to become effective no earlier than 120 days after receipt of such notice by both the commission and (permittee), as evidenced by the return receipts.

9. Guarantor agrees that if (permittee) fails to provide alternate financial assurance as required by 31 TAC §305.153 and obtain written approval of such assurance from the executive director of the commission within 90 days after a notice of cancellation by the Guarantor is received by the executive director of the commission from Guarantor, Guarantor shall provide such alternate financial assurance in the name of (permittee).

10. Guarantor expressly waives notice of acceptance of this guarantee by the commission or by (permittee). Guarantor also expressly waives notice of amendments or modifications of the closure plans and of amendments or modifications of the injection well permits.

Effective date: _____

(Name of Guarantor)

(Authorized Signature for Guarantor)

(Name of Person Signing)

(Title of Person Signing)

(Signature of Witness or Notary)

- (o) Permittees who are also filing financial test assurances for purposes of 40 Code of Federal Regulations, Part 264, Subpart H, may satisfy the requirements of this section by combining their submittals to the commission with appropriate changes or additions to required wording, subject to approval of the executive director.

§305.154. Standards. Although the commission may impose stricter standards where appropriate, at a minimum the permittee shall comply with the standards prescribed by Chapter 331 of this

title (relating to Underground Injection Control), and the rules referenced herein:

- (1) Construction Requirements. Section 331.62 and §331.82 of this title (relating to Construction Standards; Construction Requirements).
- (2) Compliance schedule. The commission may establish a compliance schedule for existing wells to achieve compliance with the requirements of this section.
- (3) Construction plans. Changes in construction plans shall be approved by certification under §331.45 of this title (relating to Certification of Construction and Completion), or, if required, by permit amendment before such changes may be physically incorporated into construction of the well.
- (4) Commencing operations. Commencement of injection operations prior to certification by the executive director that construction and completion are compliant shall constitute a violation of the permit and may be considered grounds for revocation or suspension of the permit, as well as for enforcement action.
- (5) Operating Requirements. Section 331.63 of this title (relating to Operating Requirements) and §331.83 of this title (relating to Operating Requirements).
- (6) Monitoring and Reporting. Section 331.64 and §331.65 of this title (relating to Monitoring Requirements; Reporting Requirements); §331.84 and §331.85 of this title (relating to Monitoring Requirements; Reporting Requirements); or §331.101 through 331.107 of this title (relating to Standards for Class III Well Production Area Development).
- (7) Plugging. The permittee shall notify the executive director and obtain approval before plugging an injection well.

§305.155. Production Area Authorization. A production area authorization shall include for each production area;

- (1) a mine plan;
- (2) a restoration table;
- (3) a baseline water quality table;
- (4) control parameters upper limits;
- (5) monitor well locations; and,
- (6) any special provisions determined appropriate by the commission.

§305.156. Hazardous Waste. For a hazardous waste disposal well, the surface facilities shall comply with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). The surface facilities for an injection well which

disposes of hazardous waste are hazardous waste management facilities.

§305.157. Record Retention. The permittee shall retain all records concerning the nature and composition of injected fluids until five years after completion of plugging and abandonment procedures for the well. The executive director may require a permittee to submit copies of the records at any time prior to conclusion of the retention period.

§305.158. Additional Conditions. The commission shall impose any other condition necessary to prevent the pollution of fresh water.

§305.159. Additional Class I Conditions. A permit for a Class I well shall include expressly or by reference the following conditions:

- (1) A sign shall be posted at the well site which shall show the name of the company, company well number and commission permit number. The sign and identification shall be in the English language, clearly legible and shall be in numbers and letters at least one (1) 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.

Subchapter I
Hazardous Waste Incinerator Permits
§§305.171-305.174

These sections are adopted under Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§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 amended to reflect the extension pursuant to §305.62(c)(2)(C)(vii) of this title (relating to Amendment).

- (1) Applicant must submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of 40 Code of Federal Regulations §284.343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in 40 Code of Federal Regulations §264.345.
- (2) The executive director shall review this statement and any other relevant information submitted with Part B of the permit application and shall specify requirements for this period sufficient to meet the performance standards of 40 Code of Federal Regulations §264.343, based on the executive director's engineering judgment.

§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 §264.343 and of determining adequate operating conditions under 40 Code of Federal Regulations §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 Code of Federal Regulations 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 the Evaluation of Solid Waste, Physical/Chemical Methods" 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 the Evaluation of Solid Waste, Physical/Chemical Methods," 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 Code of Federal Regulations 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 Code of Federal Regulations §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 Code of Federal Regulations §264.345; and
 - (D) the information sought in subparagraphs (A) and (C) of this paragraph cannot reasonably be developed through other means.
- (6) During each approved trial burn (or as soon after the burn as is 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;
 - (D) a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 Code of Federal Regulations §264.343(a).
 - (E) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (4 pounds per hour), a computation of HCl removal efficiency in accordance with 40 Code of Federal Regulations §264.343(b);
 - (F) a computation of particulate emissions, in accordance with 40 Code of Federal Regulations §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 compliance with the performance standards in 40 Code of Federal Regulations §264.343 and to establish the operating conditions required by 40 Code of Federal Regulations §264.345 as necessary to meet those performance standards.

- (7) The applicant must submit to the executive director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in paragraph (6) of this section. This submission shall be made within 90 days of completion of the trial burn, or later with the prior approved of the executive director.
- (8) All data collected during any trial burn shall be submitted to the executive director immediately following the completion of the trial burn.
- (9) All submissions required by this section shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports).
- (10) Based on the results of the trial burn, the commission shall set the operating requirements in the final permit according to 40 Code of Federal Regulations §264.345. The permit amendment shall proceed as a minor amendment according to §305.62(c) of this title (relating to Amendment).

§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.

§305.174. Existing Incinerators. For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations §264.343 and of determining adequate operating conditions under 40 Code of Federal Regulations §264.345, the applicant for a permit for an existing hazardous waste incinerator may prepare and submit a trial burn plan and perform a trial burn in accordance with §305.172(2)-(9) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions). 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. If the applicant submits a trial burn plan with Part B of the permit application, the trial burn shall be conducted and the results submitted within a time period to be specified by the executive director.

Subchapter J
Permits for Land Treatment Demonstrations
Using Field Tests or Laboratory Analyses
§§305.181-305.184

These sections are adopted under Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§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.

§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, 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).

§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.

§305.184. Permit Amendment. 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 as a minor amendment under §305.62(c) of this title (relating to Amendment), provided any such change is minor, or otherwise will proceed as an amendment under §305.62(d) of this title (relating to Amendment).
- (2) If no amendments of the second phase of the permit are necessary, or if only minor amendments are necessary and have been made, the commission shall give notice in accordance with §305.96(b) of this title (relating to Action On Application For Amendment). 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.
- (3) If amendments under §305.62(d) of this title (relating to Amendment) are necessary, the second phase of the permit will become effective only after those amendments have been made.

Subchapter K
Research, Development and
Demonstration Permits
§§305.191-305.194

These sections are adopted under Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§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.

§305.192. Waiver of Requirements. For the purpose of expediting review and issuance of permits under this subchapter, the commission may, consistent with the protection of human health and safety and the environment, modify or waive permit application and permit issuance requirements of this subchapter, except that there

may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

§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.

§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.

Subchapter L
Compliance Plan
§305.401

This section is promulgated under Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§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: Chapter 281 (relating to Applications Processing); §305.44 of this title (relating to Signatories to Applications); §305.47 of this title (relating to Retention of Application Data); §305.43 of this title (relating to Who Applies); §305.53 of this title (relating to Application Fees); §305.50 of this title (relating to Additional Requirements for an Application for a Solid Waste Permit); §305.92 of this title (relating to Action on Applications); §305.93 of this title (relating to Action on Application for Permit); §305.96 of this title (relating to Action on Application for Amendment); §305.98 through §305.105 of this title (relating to Scope of Proceedings; Commission Action; Notice of Application; Notice of Hearing; Notice by Publication; Notice by Mail; Radio Broadcasts; and Request for Public Hearing); §305.122 through §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 40 Code of Federal Regulations §270.14(c)(7) and (8). The executive director may request information necessary to determine the appropriateness and extent of corrective action required by §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

- (d) The executive director shall prepare a draft compliance plan unless the executive director recommends not to approve the plan. The draft compliance plan shall be available for public review, and notice that the executive director has prepared such a plan will be given pursuant to §305.100 of this title (relating to Notice of Application). The draft compliance plan shall be filed with the commission to be included in its consideration of the approval of a compliance plan.
- (e) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft compliance plan. The executive director shall send this summary together with the draft compliance plan to the applicant and, on request, to any other person. The summary shall include the following information, where applicable:
 - (1) a brief description of the type of facility or activity which is the subject of the draft compliance plan;
 - (2) the type and quantity of wastes, fluids, or pollutants which are being managed at the facility;
 - (3) a brief summary of the basis for the conditions of the draft compliance plan, including references to applicable statutory or regulatory provisions;
 - (4) a description of the procedures for reaching a final decision on the draft compliance plan, including procedures whereby the public may participate in the final decision; and
 - (5) the name and telephone number of a person in the Commission to contact for additional information.
- (f) The plan may be amended:
 - (1) when the corrective action program specified in the plan under §335.165 of this title (relating to Compliance Monitoring Program) has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable time; or
 - (2) when the plan requires a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program), but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard. The sections of this chapter pertaining to major amendments shall be applicable to the foregoing amendments to the compliance plan.
- (g) Whenever a facility is subject to permitting under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is further required under §335.156

through §335.167 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; Corrective Action Program; and Corrective Action for Solid Waste Management Units) to conduct compliance monitoring or corrective action, processing of the permit application for the facility and the establishment of the compliance plan shall be consolidated in one proceeding.

- (h) Nothing herein shall be construed to be inconsistent with the commission's authority under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7 §8 and §8b.

Subchapter M
Waste Treatment Inspection Fee Program
§§305.501-305.506

These sections are adopted under Texas Water Code, §§5.103 and 5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§305.501. Purpose. It is the purpose of this subchapter to establish a waste treatment inspection fee program. Under this program, an annual waste treatment inspection fee is imposed on each permittee holding a permit under the Texas Water Code, Chapter 26. All fees shall be deposited in a fund for the purpose of supplementing other funds appropriated by the legislature to pay the expenses of the commission in inspecting waste treatment facilities and enforcing the provisions of the Texas Water Code, Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities.

§305.502. Definitions. The definitions contained in the Texas Water Code, §26.001, shall apply herein. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

Annual waste treatment inspection fee - a fee charged to each permittee holding a permit under the Texas Water Code, Chapter 26, and assessed once per year, ranging from one hundred dollars to ten thousand dollars.

Commission - the Texas Water Commission.

Daily average flow - the total by volume of all wastewater discharges authorized under a permit expressed as an average flow per day, exclusive of variable or occasional stormwater discharges. Generally, the daily average flow is based on the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the daily average flow is based on the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

Final flow limit - the maximum amount of wastewater discharge authorized during any term of the permit, expressed as a daily average flow.

Fund - the Waste Treatment Facility Inspection Fund.

No-discharge permit - a permit which does not authorize the discharge of wastewaters into waters in the state, including, but not limited to, permits for evaporation ponds and irrigation systems.

Payment - payment is effective upon receipt by the commission of the full amount of the annual waste treatment inspection fee.

Permit - any permit issued by the Texas Water Commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7).

Report discharge permit - a permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported but without any limitation on the volume of discharge.

Stormwater discharge permit - a permit which authorizes the variable or occasional discharge of accumulated stormwater and stormwater runoff, but without any specified limitation on the volume of discharge.

§305.503. Fee Assessment. An annual waste treatment inspection fee is hereby assessed each permit for deposit in the fund. The amount assessed is determined by the daily average flow for which the permitted facility is authorized as of each October 1. Where the permitted facility has not been constructed, the assessed fee will be the same as for no-discharge permits. Those permits authorizing only stormwater or report discharges as of each October 1 are assessed a general fee for such discharges, rather than for a daily average discharge. Fees are assessed according to the following schedule, based on discharges authorized under the wastewater discharge permit (flows are expressed in million gallons per day):

- (1) inactive or no discharge permits -- \$100;
- (2) flow less than or equal to .05 -- \$200;
- (3) flow greater than .05 but not more than 0.1 -- \$400;
- (4) flow greater than 0.1 but not more than 0.25 -- \$600;
- (5) flow greater than 0.25 but not more than 0.5 -- \$800;
- (6) flow greater than 0.5 but not more than 1.0 -- \$1,000;
- (7) flow greater than 1.0 but not more than 2.0 -- \$2,000;
- (8) flow greater than 2.0 but not more than 3.0 -- \$3,000;
- (9) flow greater than 3.0 but not more than 4.0 -- \$4,000;
- (10) flow greater than 4.0 but not more than 5.0 -- \$5,000;
- (11) flow greater than 5.0 but not more than 6.0 -- \$6,000;

- (12) flow greater than 6.0 but not more than 7.0 -- \$7,000;
- (13) flow greater than 7.0 but not more than 8.0 -- \$8,000;
- (14) flow greater than 8.0 but not more than 9.0 -- \$9,000;
- (15) flow greater than 9.0 -- \$10,000;
- (16) stormwater or report -- \$500.

§305.504. Fee Payment. Annual waste treatment inspection fees are payable on February 1 of each year for all permittees. Fees shall be paid by check, certified check or money order payable to "Waste Treatment Facility Inspection Fund." New permits will require full payment of the appropriate fee within 30 days of the final order of the Texas Water Commission issuing the permit, and thereafter will be assessed an annual waste treatment inspection fee under the schedule set forth herein, beginning with the next regular billing date. All fee assessments are to be based on daily average flow under the applicable flow limits (interim or final) specified in the permit, without regard to whether the permitted facility actually is discharging a lower volume. Where the daily average flow authorized for a permitted facility changes to a higher interim level or to the final level authorized by the permit, the revised fee, if any, will be assessed at the next regular payment date following the change in authorized flow. If a permit is amended to authorize a lesser or greater daily average flow, the revised fee will be assessed at the next regular payment date following the final order of the Texas Water Commission effecting the amendment. If initial construction of a newly-permitted facility is not complete, the facility will be assessed the same fee as for no discharge permits. Fees are payable regardless of whether the permitted facility actually is in operation.

§305.505. Fund. All fees collected under this waste treatment inspection fee program are to be deposited in the waste treatment facility inspection fund. The fund shall be managed in accordance with §305.501 of this title (relating to Purpose).

§305.506. Cancellation, Revocation and Transfer. Cancellation or revocation of a permit, whether by voluntary action on the part of the permittee or as a result of involuntary proceedings initiated by the commission, will not constitute grounds for a refund, in whole or in part, of any annual inspection fee already paid by the permittee. Transfer of a permit will not entitle the transferor permittee to a refund, in whole or in part, of any annual inspection fee already paid by that permittee. Any permittee to whom a permit is transferred shall be liable for payment of the annual inspection fee assessed for the permitted facility on the same basis as the transferor of the permit.