

US EPA ARCHIVE DOCUMENT

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THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

ATTORNEY GENERAL'S STATEMENT
FOR H.S.W.A. CLUSTER I

I hereby certify, pursuant to my authority as Attorney General of the State of Texas and in accordance with Section 3006(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901, et seq.), and 40 CFR Part 271 that in my opinion the laws of the State of Texas provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Texas Water Commission (also "Commission"). The specific authorities provided, which are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which shall be fully effective by the time the program is approved, include those identified below and those provided in the "checklist" which is incorporated into and made a part of this Statement for all purposes. S.B. 249, passed by the 69th Texas Legislature and effective September 1, 1985, abolished the Texas Department of Water Resources and transfers responsibility to carry out the provisions of the Texas Solid Waste Disposal Act, TEX. REV. CIV. STAT. ANN. Art. 4477-7 (Vernon) [codified in TEX. HEALTH & SAFETY CODE ANN. Chapter 361 (Vernon Supp. 1990)], to the Texas Water Commission. It further amends the Texas Solid Waste Disposal Act to designate the Texas Water Commission as the state agency having authority to regulate municipal hazardous waste, previously under the jurisdiction of the Texas Department of Health. Section 10.004(f) of S.B. 249 provides that the reorganization of the Texas Department of Water Resources into the Texas Water Commission and Texas Water Development Board does not affect or impair any act done, bonds authorized or issued, or obligation, right, permit, license, standard, rule, criterion, order, resolution, or penalty that has accrued or that exists under the authority of the Texas Department of Water Resources, Texas Water Commission, or Texas Water Development Board as they existed before the effective date of this Act, and those bonds, obligations, rights, permits, licenses, standards, rules, and obligations, rights, permits, licenses, standards, rules, and criteria remain in effect until such time as they are paid, recalled, changed, altered, renewed, amended, cancelled, revoked, repealed, or abolished under the Water Code, other laws of this state, and outstanding contracts, agreements, and resolutions.

I further certify that I have reviewed the terms and conditions of the Memorandum of Agreement between the State of Texas and the

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United States Environmental Protection Agency, Region VI, and that (1) the State has the authority to enter into the agreement, (2) the State has the authority to carry out the agreement, and (3) no applicable State statute requires that the procedure be promulgated as a rule in order to be binding.

I. IDENTIFICATION AND LISTING

A. State statutes and regulations contain lists of hazardous waste which encompass all wastes controlled under the following Federal regulations as indicated in the designated Revision Checklists:

- (1) chlorinated aliphatic hydrocarbons, 40 CFR 261.31, as amended February 10, 1984 [49 FR 5308-15], Revision Checklist 4.
- (2) Warfarin and zinc phosphide listing, 40 CFR 261.33(e) and (f), as amended May 10, 1984 [49 FR 19923], Revision Checklist 7.
- (3) TDI, DNT and TDA wastes, 40 CFR 261.32 and 261.33(f), as amended October 23, 1985 [50 FR 42936-43], Revision Checklist 18.
- (4) Spent solvents, 40 CFR 261.31, as amended December 31, 1985 [50 FR 53319-20] and January 21, 1986 [51 FR 2702], Revision Checklist 20.
- (5) EDB wastes, 40 CFR 261.32, as amended February 13, 1986 [51 FR 5330], Revision Checklist 21.
- (6) Four spent solvents, 40 CFR 261.31 and 261.33(f), as amended February 25, 1986 [51 FR 6541], Revision Checklist 22.
- (7) Listing of spent pickle liquor from steel finishing operations, 40 CFR 261.32, as amended May 28, 1986 [51 FR 19320] and September 22, 1986 [51 FR 33612], Revision Checklist 26.
- (8) Listing of commercial chemical products and Appendix VIII Constituents, 40 CFR 261.33 and Appendix VIII, as amended August 6, 1986 [51 FR 28296], Revision Checklist 29.
- (9) EBDC wastes, 40 CFR 261.32, as amended on October 24, 1986 [51 FR 37725], Revision Checklist 33.

B. State statutes and regulations define hazardous waste so as to control the generation, transportation, treatment, storage and disposal of hazardous waste produced by small quantity generators of between 100 and 1000 kilograms/month as indicated in Revision Checklist 23. State statutes and regulations also require small quantity generators to certify good faith efforts to minimize waste generation and to select the best available and affordable treatment, storage or disposal alternatives, 40 CFR 262 as amended October 1, 1986 [51 FR 3190], Revision Checklist 32 (See Item IX below).

[Federal Authority: RCRA §3001(d); 40 CFR Parts 260-263 and 270 as amended March 24, 1986 (51 FR 10174) and October 1, 1986 (51 FR 35190).]

C. State statutes and regulations define hazardous waste so as to exclude waste pickle liquor sludge generated by lime stabilization, but only to the extent that such waste is excluded by 40 CFR 261.3(c)(2), as amended June 5, 1984 [49 FR 23287], as indicated in Revision Checklist 8.

[Federal Authority: RCRA §3001; 40 CFR 261.3(c).]

D. State statutes and regulations define hazardous waste so as to not exclude household waste other than those household wastes excluded in 40 CFR 261.4(b)(1), as amended November 13, 1984 [49 FR 44980], and as indicated in Revision Checklist 9.

[Federal Authority: RCRA §3001; 40 CFR 261.4(b)(c).]

E. State statutes and regulations incorporate the most recent edition and updates to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846) as indicated in Revision Checklist 11.

[Federal Authority: RCRA §§2002, 3001 and 40 CFR 260.11, 260.21 and 270.6(a) as amended December 4, 1984 (49 FR 47391).]

F. State statutes and regulations define solid wastes to include the hazardous components of radioactive mixed wastes, July 3, 1986 [51 FR 24504]. See State Program Advisory (SPA) #2.

[Federal Authority: RCRA §§1006 and 3001(b).]

Citation of Laws and Regulations

Section 2(29) of the Texas Solid Waste Disposal Act, ("Act"), TEX. REV. CIV. STAT. ANN. Art. 4477-7, as amended September 1, 1987 (§ 2(31) of the TSWDA as amended September 1, 1985), defines solid

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waste. The term "solid waste" is further defined in 31 TAC Section 335.1 in a manner corresponding to the provisions of 40 CFR Section 261.2, as amended. In addition, Section 2(14) of the Act as amended in 1977 adopted the definition of hazardous waste as any solid waste identified or listed as a hazardous waste by the Administrator of the U.S. Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act. In 1977, the EPA Administrator had not yet promulgated federal regulations that identified and listed hazardous waste. Thus, this initial State legislation adopting the EPA Administrator's definition of hazardous waste was intended as a prospective adoption of federal regulations. This definition of hazardous waste is also contained in 31 TAC Section 335.1. Part 261 identifies and lists hazardous wastes. Hazardous wastes are identified by characteristics as well as by listing. Therefore, the definition of hazardous waste adopted by the state includes the criteria, characteristics and listings set out in 40 CFR §261 Subparts A, B, C, and D. In addition, 31 TAC Section 335.29 adopts by reference the appendices to 40 CFR Part 261, which may also function in the identification and listing of hazardous waste.

Changes to the universe of federal hazardous wastes and newly listed or identified hazardous wastes are effective in Texas by virtue of the definition of hazardous waste in the state statute and regulations, which incorporates the provisions that identify or list hazardous wastes in 40 CFR Part 261 by reference. Texas Solid Waste Disposal Act, §2(13) as amended in 1987, §2(15) as amended in 1985, §2(12) as amended in 1981, and §2(14) as initially adopted in 1977, (hereinafter cited as TSWDA) defines hazardous waste as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq., as amended." (emphasis added) The prospective adoption the initial 1977 definition of hazardous waste, as well as, the 1981 addition of the Resource Conservation and Recovery Act (hereinafter cited as RCRA) by the state statute (TSWDA) is constitutional under state law.

Statutory adoption by reference is an approved method of legislation. See Trimmier v. Carlton, 296 S.W. 1070, 1074 (Tex. 1927) (hereinafter cited as Trimmier v. Carlton); 12 Tex. Jur. 3rd §66; 2A Sutherland, Statutory Construction, § 51.07 (4th Ed. 1973); Attorney General Opinion JM-506 (1986). However, the question as to whether or not subsequent modifications to the adopted statute are incorporated in the adopting statute depends upon the construction of the adopting statute. There are two types of reference statutes- statutes of "general" reference and statutes of

"specific" reference. See St. Paul Mercury Insurance Co. v. Billiot, 342 S.W.2d 161 (Tex. Civ. App. - Beaumont 1960, writ ref'd) (hereinafter cited as St. Paul Mercury v. Billiot); Trimmier v. Carlton; 2A Sutherland, Statutory Construction § 51.07 (4th Ed. 1973); Attorney General Opinion JM-237 (1984).

An adopting statute which refers to a subject in general sense is labelled as a general reference statute. General reference statutes include not only the laws in force at the time the adopting statute became effective, but also include all amendments and modifying legislation subsequent to the time the reference statute was enacted. See St. Paul Mercury v. Billiot; 2A Sutherland, Statutory Construction § 51.07 (4th Ed. 1973); Attorney General Opinion JM-237 (1984). In contrast, if the adopting statute contains language of specific and descriptive reference to a statute or provision, then the statute is entitled as a specific reference statute. Specific reference statutes incorporate only the adopted statute in existence at the time of enactment and do not include subsequent modifications unless the language of the adopting act evidences legislative intention that the referenced statute was adopted as it then existed and as it might later be amended. (emphasis added) See St. Paul Mercury v. Billiot; Attorney General Opinions JM-506 (1986); JM-245 (1984); JM-237 (1984); H-294 (1974); V-1042 (1950).

Under the above analysis, both the 1977 definition referring to the future identification and listing of hazardous wastes by the EPA Administrator pursuant to the federal Solid Waste Disposal Act and as presently written, referring to RCRA, as amended, falls under the specific reference classification. There has always been a definite legislative intent to incorporate all subsequent modifications of the federal Solid Waste Disposal Act and currently, of RCRA, with regard to the definition, identification and listing of hazardous waste. See St. Paul Mercury v. Billiot; Attorney General Opinion JM-237 (1984). The case St. Paul Mercury v. Billiot supports this conclusion. In St. Paul Mercury v. Billiot, the Texas Court of Civil Appeals held that the adopting statute contained language of specific reference. The adopting statute provided that,

[u]nless otherwise provided
herein [the relevant section] of
Article 8306 of the Revised
Civil Statutes of Texas, 1925,
as amended [is] hereby adopted
and shall govern . . .
(Emphasis added).

The case was decided in favor of incorporating subsequent modifications because the language "as amended" was included in the specific reference statute. Similarly, in Trimmier v. Carlton the words "and amended thereto" were held to prove legislative intention to incorporate subsequent modifications. The language of "as amended" in St. Paul Mercury v. Billiot is directly on point with the language of §2(13) of the TSWDA. Therefore, under the case law of St. Paul Mercury v. Billiot, Trimmier v. Carlton and the extensive support by numerous Attorney General Opinions, the state statute TSDWA, Art. TEX. REV. CIV. STAT. ANN. Art. 4477-7, § 2(13) which prospectively adopts RCRA is constitutional.

State regulations contain no general provisions which reference publications which are to be used in conjunction with the regulations. The State regulations relating to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 are found at 31 TAC §§335.125(d) and 175(c).

Date of Enabling Legislation: September 1, 1969, August 29, 1977, September 1, 1985, September 1, 1987.

Remarks of the Attorney General:

The 70th Texas Legislature amended several of the provisions of the Texas Solid Waste Disposal Act, TEX. REV. CIV. STAT. ANN. Art. 4477-7 in September of 1987. In the course of amending the Act, subsections and paragraphs were reordered. Cites contained herein conform to the Act as amended in 1987. Parenthetical reference is made to the citations as found in the Act as amended in 1985.

State statutes and regulations provide adequate authority to regulate the hazardous waste component of wastes containing both hazardous waste and source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (referred to as "radioactive mixed waste"). The state statutory and regulatory authority to regulate the hazardous waste component of radioactive mixed waste is set forth in the Texas Solid Waste Disposal Act, TEX. REV. CIV. STAT. ANN. Art. 4477-7, Section 3(d) and in 31 Texas Administrative Code (TAC) Section 335.1 (the definitions of "solid waste" and "hazardous waste", which also appear in the Solid Waste Disposal Act). The Texas Department of Health (as the state agency having jurisdiction over radioactive waste activities) and the Texas Water Commission have entered into a Memorandum of Understanding (MOU) providing for concurrent regulatory jurisdiction over the components of radioactive mixed waste subject to each agency's jurisdiction. There is nothing in state law to prohibit the execution of this agreement or the inclusion of the provisions contained therein. The MOU has been adopted by rule, as provided in §4(c) of the Texas Solid Waste Disposal Act.

II. DEFINITION OF SOLID WASTE

A. State statutes and regulations define hazardous waste and impose management standards so as to control all the hazardous waste controlled under 40 CFR Parts 261, 264, 265 and 266 as amended January 4, 1985 [50 FR 614-669], April 11, 1985 [50 FR 14216-20], and August 20, 1985 [50 FR 33541-43] as indicated in Revision Checklist 13.

[Federal Authority: RCRA §§3001,3004]

Citation of Laws and Regulations

Section 2(29) (§2(31), 1985 Act) of the TSWDA, TEX. REV. CIV. STAT. ANN. Art. 4477-7, defines solid waste as garbage, refuse, sludge from a waste treatment plant or air pollution control facility, and other discarded material, including soil, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulations by permit issued pursuant to Chapter 26, Texas Water Code; (ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the Administrator of the U.S. Environmental Protection Agency pursuant to RCRA. The term "solid waste" is further defined in 31 TAC Section 335.1 in a manner corresponding to the provisions of 40 CFR Section 261.2, as amended. In addition, Section 2(13) (§2(13), 1985 Act) of the Act defines hazardous waste as any solid waste identified or listed as a hazardous waste by the Administrator of the U. S. Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act. This definition of hazardous waste is also contained in 31 TAC Section 335.1. Changes to the universe of federal hazardous wastes and newly listed or identified hazardous wastes are effective in Texas by virtue of the definition of hazardous waste in the state statute and regulations, which incorporates the provisions that identify or list hazardous wastes in 40 CFR Part 261 by reference. In addition, 31 TAC Section 335.29

adopts by reference the appendices to 40 CFR Part 261, which may also function in the identification and listing of hazardous waste.

State regulations relating to recyclable materials are as follows: (1) 31 TAC Section 335.17 relating to special definitions; (2) 31 TAC Section 335.18 relating to variances from classification as a solid waste; (3) 31 TAC Section 335.19 relating to standards and criteria for variances from classification as a solid waste; (4) 31 TAC Section 335.20 relating to variances to be classified as a boiler; (5) 31 TAC Section 335.21 relating to procedures for variances from classifications as solid waste or to be classified as a boiler; (6) 31 TAC Section 335.22 relating to additional regulation of certain hazardous waste recycling activities on a case-by-case basis; (7) 31 TAC Section 335.23 relating to procedures for case-by-case regulation of hazardous waste recycling activities; (8) 31 TAC Section 335.24 relating to requirements for recyclable materials; and (9) 31 TAC Chapter 335, Subchapter H, relating to standards for the management of specific wastes and specific types of facilities.

Section 3(d) of the Texas Solid Waste Disposal Act affirmatively states that the Texas Water Commission has all powers under the Solid Waste Disposal Act, as amended, necessary of convenient to carry out responsibilities concerning the regulation of the management of hazardous waste components of any radioactive wastes under the Texas Department of Health's jurisdiction. The Texas Water Commission shall consult with the Texas Department of Health with regard to regulation and management under §3(d) of the Act and may not adopt any rules or engage in any management activities that are in conflict with state or federal laws and rules relating to regulation of radioactive wastes.

Date of Enabling Legislation: September 1, 1969; August 29, 1977; September 1, 1985.

Remarks of the Attorney General

Section 2(29)(A)(ii) of the Texas Solid Waste Disposal Act excludes from the definition of solid waste "soil, dirt, rock, sand and other natural or man-made inert solid material used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The application of this exclusion does not affect the regulation of hazardous waste in Texas. Any such materials containing hazardous waste would be regulated under the State hazardous waste program because those materials would no longer be "inert solid material" subject to the exclusion.

Section 2(29)(A)(iii) (§2(31)(A)(iii), 1985 Act) of the Texas Solid Waste Disposal Act excludes from the definition of solid waste "waste

materials which result from activities associated with the exploration, development or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the Administrator of U. S. Environmental Protection Agency pursuant to RCRA. Federal law exempts from regulation under Subtitle C of RCRA at 40 CFR Section 261.4(b)(5), "drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy." (The State provision does not specifically refer to "crude oil and Natural gas" [emphasis added] but that is the intent.) However, certain wastes related to petroleum refining operations have been listed by the Administrator as hazardous wastes in 40 CFR Section 261.32. Under State law the exclusion provided for waste materials associated with the production of oil or gas does not include wastes generated from the refining of oil or gas. Therefore, all oil and gas related wastes currently within the federal universe of hazardous wastes are subject to regulation by the Texas Water Commission as hazardous wastes.

Section 2(14) (§2(16), 1985 Act) of the Texas Solid Waste Disposal Act defines industrial solid waste designated as Class I by the Executive Director of the Commission as any industrial solid waste or mixture of industrial solid waste which because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means and may pose a substantial present or potential danger to human health or the environment when improperly treated, stored, transported, or otherwise managed, including hazardous waste. Class I waste, by definition, includes all wastes identified or listed as hazardous by the Administrator of the United States Environmental Protection Agency. The Executive Director has no discretion concerning their inclusion in the Class I category.

Section 2(13) (§2(15), 1985 Act) of the Texas Solid Waste Disposal Act defines "hazardous waste" as any solid waste identified or listed as a hazardous waste by the Administrator of the U. S. Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by RCRA. Part 261 identifies and lists hazardous wastes. Hazardous wastes are identified by characteristics as well as by listing. Therefore, the definition of hazardous waste adopted by the State includes the criteria, characteristics and listings set out in 40 CFR §261 Subparts A, B, C, and D. Because the incorporation of the federal regulations is based in the state

statute, rule-making procedures, including the prohibition that rules may both incorporate by reference prospectively, do not apply. Moreover, the use of terms "identified" and "listed" in the state provision refer specifically to the language of Section 3001 of RCRA wherein the Administrator is directed to establish criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes. The use of this terminology in the state definition, therefore, was intended to incorporate the provisions of Subparts C and D of Part 261.

In addition to incorporation of Subparts C and D, the definition of "hazardous waste" also operates to incorporate those provisions of 40 CFR Part 261, most notably Section 261.3 relating to the definition of hazardous waste and Section 261.4 relating to exclusions, which define the universe of hazardous waste. A mixture of hazardous and non-hazardous waste, therefore, would be regulated as a hazardous waste under State law because Section 2(13) (\$2(15), 1985 Act) of the Act has incorporated the "mixture rule" by extension. The appendices to 40 CFR Part 261 are also incorporated by reference into the Texas universe of hazardous wastes, insofar as the appendices serve to identify or list a hazardous wastes through the operation of the definition of hazardous waste and through their adoption by reference in 31 TAC 335.29.

III. MANAGEMENT OF DIOXIN WASTES

A. State statutes and regulations contain the following requirements regarding dioxin wastes as indicated in Revision Checklist 14:

- (1) Dioxin wastes are listed and otherwise identified as hazardous wastes so as to encompass all such wastes controlled under 40 CFR 261.5(e), 261.7(b), 261.30(d), 261.31, and 261.33(f).
- (2) Special management and permitting standards for facilities managing dioxin wastes and prohibitions applicable to interim status facilities, as provided in 40 CFR Parts 264, 265, and 270.

[Federal Authority: §§3001, 3004; 40 CFR Parts 261, 264, 265 and 270 as amended January 14, 1985 (50 FR 1978-2006).]

Citation of Laws and Regulations

Section 2(29) of the Solid Waste Disposal Act, TEX. REV. CIV. STAT. ANN. Art. 4477-7, as amended September 1, 1987 (§ 2(31) of the TSWDA as amended September 1, 1985), defines solid waste. The term "solid waste" is further defined in 31 TAC Section

335.1 in a manner corresponding to the provisions of 40 CFR Section 261.2, as amended. In addition, Section 2(13) of the Act as amended in 1987 (§ 2(15) of the Act as amended in 1985) defines hazardous waste as any solid waste identified or listed as a hazardous waste by the Administrator of the U. S. Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act. This definition of hazardous waste is also contained in 31 TAC Section 335.1. Changes to the universe of federal hazardous wastes and newly listed or identified hazardous wastes are effective in Texas by virtue of the definition of hazardous waste in the state statute and regulations, which incorporates the provisions that identify or list hazardous wastes in 40 CFR Part 261 by reference. In addition, 31 TAC Section 335.29 adopts by reference the appendices to 40 CFR Part 261, which may also function in the identification and listing of hazardous waste.

IV. SATELLITE ACCUMULATION

State statutes and regulations allow generators to accumulate at the site of generation, without a permit or interim status, as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste provided that the generator complies with the requirements specified in §262.34(c) as indicated in Revision Checklist 12.

[Federal Authority: RCRA §§2002, 3002, 3004, 3005 and 40 CFR 262.34(c) as amended December 20, 1984 (49 FR 49571).]

V. APPLICABILITY OF INTERIM STATUS STANDARDS

A. State statutes and regulations contain the following requirements regarding interim status standards as indicated in Revision Checklists 3 and 10:

- (1) Interim status standards apply to facilities identified in 40 CFR. 265.1(b).

[Federal Authority: RCRA §3004; 40 CFR Part 265 as amended November 22, 1983 (48 FR 52718) and November 21, 1984 (49 FR 46095).]

Citation of Laws and Regulations

Subsection 4(c) of the Solid Waste Disposal Act, TEX. REV. CIV. STAT. ANN. Art. 4477-7, authorizes the Texas Water Commission to promulgate rules and regulations consistent with the general intent and purposes of the Act and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction. This subsection further requires the Texas Water Commission to require persons who generate, transport, store, process or dispose of hazardous waste to

provide recordkeeping and use a manifest or other appropriate system to assure that such wastes are transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

Subsection 8(a) of the TSWDA provides that no person may cause, suffer, allow, or permit the collection, storage, handling, or disposal of solid waste in violation of the Act or of the rules and regulations of the Texas Water Commission. Paragraph 4(f)(2) of the act provides that owners and operators of existing industrial hazardous waste facilities who have filed an application in accordance with Commission rules may continue to operate until action is taken on the permit, except as provided by Subsection (1). Subsection 4(1) provides that solid waste permits issued by a State agency to a land disposal facility, incinerator facility or other solid waste facility under subsection 4(f)(2), which have not been reissued in accordance with an approved state program, will terminate on dates specified in the statute, unless the owner or operator of the facility applies for a final determination regarding issuances of a permit before that date and in the case of land disposal facilities certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. The provisions of this Section are implemented by 31 TAC Section 335.43 and Section 335.2. In addition, 31 TAC Section 335.2(c) provides that owners and operators of existing hazardous waste facilities who have filed an application with the Commission may continue the on-site storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application. This provision is applicable to industrial and municipal hazardous waste. 31 TAC Section 335.45 provides that Subchapters B through E (generator, transporter and "interim status" standards) apply to all generators, transporters, and owners and operators of hazardous waste management facilities; all persons holding permits or other authorizations must also meet the requirements of the applicable rules and permit provisions.

Date of Enactment of Enabling Legislation: September 1, 1985, September 2, 1981; August 29, 1977.

VI. PAINT FILTER TEST

State statutes and regulations require the use of a paint filter test to determine the absence or presence of free liquids in either a containerized or bulk waste as indicated in Revision Checklists 16, 17F and 25.

[Federal Authority: RCRA §§3004, 3005, 40 CFR Parts 260, 264, 265 and 270 as amended April 30, 1985 (50 FR 18370) July 15, 1985 (50 FR 28702) and May 28, 1986 (51 FR 19176).]

VII. NATIONAL UNIFORM MANIFEST

State statutes and regulations require generators to use the national uniform manifest as indicated in Revision Checklists 5 and 32.

[Federal Authority: RCRA §§2002, 3002, 3003 and 40 CFR Parts 260 and 262 as amended March 20, 1984 (49 FR 10490) and October 1, 1986 (51 FR 35190).]

VIII. BIENNIAL REPORT

A. State statutes and regulations contain the following reporting requirements as indicated in Revision Checklists 1 and 30.

- (1) The biennial report contains the information indicated in 40 CFR 262.41(a).
- (2) Facilities must submit groundwater monitoring data annually to the State Director as indicated in 40 CFR 265.94.

[Federal Authority: RCRA §§3002, 3004; 40 CFR Parts 262 and 265 as amended January 28, 1983 (48 FR 3981-83) and August 8, 1986 (51 FR 28566).]

IX. WASTE MINIMIZATION

State statutes and regulations contain the following requirements regarding waste minimization as indicated in Revision Checklists 17D, 30 and 32 (See Item I.B. above).

- (1) Generators must submit report and manifest certifications regarding efforts taken to minimize the amounts and toxicity of wastes.

[Federal Authority: RCRA §3002(a)(6), (b); 40 CFR 262.41, 264.75 and 265.75 as amended July 15, 1985 (50 FR 28702), August 8, 1986 (51 FR 28556) and October 1, 1986 51 FR 35190).]

- (2) RCRA permits for the treatment, storage, or disposal of hazardous waste on the premises where the waste was

generated must contain a certification by the permittee regarding efforts taken to minimize the amount and toxicity of the generated wastes.

[Federal Authority: §3005(h); 40 CFR Parts 264.70, 264.73 and 270.30(j)(2) as amended July 15, 1985 (50 FR 28702).]

X. LIQUIDS IN LANDFILLS

A. State statutes and regulations contain the following requirements regarding liquids in landfills as indicated in Revision Checklists 17F and 25.

- (1) Effective May 8, 1985, there is a ban on the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids in any landfill pursuant to 40 CFR 264.314 and 265.314 as amended July 15, 1985 and May 28, 1986.
- (2) Effective November 8, 1985, there is a ban on the placement of non-hazardous liquids in landfills unless the owner or operator satisfies the criteria set forth in 40 CFR 264.314(e), 265.314(e), as amended July 15, 1985 and May 28, 1986.
- (3) For bulk or non-containerized liquid wastes or wastes containing free liquids they may be placed in a landfill prior to May 8, 1985, only if the requirements of 40 CFR 264.314(a) and 265.314(a) are met.

[Federal Authority: §3004(c); 40 CFR 264.314, 265.314 and 270.21(h) as amended July 15, 1985 (50 FR 28702) and May 28, 1986 (51 FR 19176).]

XI. GROUNDWATER MONITORING

A. State statutes and regulations provide that the §3004 groundwater monitoring requirements applicable to surface impoundments, waste piles, land treatment units and landfills shall apply whether or not such units are located above the seasonal high water table, have two lines and a leachate collection system or have liners that are periodically inspected, as indicated in Revision Checklist 17I.

[Federal Authority: RCRA §3004(p); 40 CFR 264.222, .252, .253, and .302 as amended July 15, 1985 (50 FR 28702).]

B. State statutes and regulations may allow variance from the groundwater monitoring requirements as provided in §3004(p).

However, those variances must be restricted as provided in RCRA §3004(p).

[Federal Authority: RCRA §3004(p); 40 CFR 264.90(b).]

XII. BURNING AND BLENDING OF HAZARDOUS WASTES

A. State statutes and regulations provide the following requirements:

- (1) The burning of fuel containing hazardous waste in a cement kiln is prohibited as specified in 40 CFR 266.31 and Revision Checklist 17J.

[Federal Authority: RCRA §3004(q); 40 CFR 266.31, July 15, 1985 (50 FR 28702).]

- (2) Fuels containing hazardous waste and all persons who produce, distribute and market fuel containing hazardous wastes must be regulated as indicated in Revision Checklists 17J and 17K.

[Federal Authority: RCRA §§3004(q)-(s); 40 CFR 261.33; 266.34, July 15, 1985 (50 FR 28702).]

B. State statutes and regulations provide exceptions to these requirements as specified in §§3004(q)-(s).

[Federal Authority: RCRA §§3004(q)-(s).]

XIII. CORRECTIVE ACTION

State statutes and regulations contain the following corrective action requirements as indicated in Revision Checklist 17L:

- (1) Corrective action is required for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit, regardless of when the waste was placed in the unit, in all permits issued after November 8, 1984 as indicated in Revision Checklist 17L.

[Federal Authority: RCRA §3004(u); 40 CFR 264.90; .101; 270.60.]

- (2) Corrective action is required beyond a facility's boundary, in accordance with RCRA §3004(v). (States now may impose these requirements through a permit or a corrective action order. Once EPA promulgates the regulations

required by RCRA §3004(v), States will need authority to impose corrective action in a permit following the §3004(v) regulations.)

[Federal Authority: RCRA §3004(v)(1).]

- (3) Corrective action is required beyond a facility's boundary in accordance with §3004(v) for all landfills, surface impoundments and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

[Federal Authority: RCRA §3004(v)(2).]

- (4) There is evidence of financial responsibility for corrective action on- and off-site.

[Federal Authority: RCRA §§3004(a)(6); (u); 40 CFR 264.90; .101.]

Citations of Laws and Regulations

Subsection 4(m) of the Texas Solid Waste Disposal Act, TEX. REV. CIV. STAT. ANN. Art. 4477-7, as amended in 1985, requires corrective action for any release of hazardous waste constituents from any solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of the time at which waste is placed in the unit. This subsection further authorizes the Commission to issue an order or any other response measure necessary to protect human health and the environment requiring corrective action.

Date of Enactment of Enabling Legislation: September 1, 1985, September 1, 1981; August 29, 1977.

Remarks of the Attorney General

The programs for compliance monitoring and corrective action are established in a compliance plan rather than through permit. The compliance plan is, however, virtually a part of the permit. Facilities which require corrective action under subsection 4(m) of the Act as amended in 1985, must have a compliance plan in order to be granted a permit. In addition, the TWC must consider the two documents together in one proceeding, as required by 31 TAC §305.401(g). The substantive standards to be used in the evaluation and implementation of these programs are consistent with the federal standards in 40 CFR Part 264, Subpart F. The procedural requirements applicable to the approval of such plan contained in

31 TAC Section 305.401, are equivalent to the applicable requirements of 40 CFR Parts 270 and 124.

XIV. HAZARDOUS WASTE EXPORTS

State statutes and regulations require generators and transporters of hazardous waste destined for export outside the United States to comply with standards equivalent to those as indicated in Revision Checklist 31.

[Federal Authority: RCRA §3017; 40 CFR 262.50 as amended August 8, 1986 (51 FR 28664).]

XV. STANDARDS FOR FACILITIES

A. State statutes and regulations prohibit the land disposal of hazardous waste prohibited under 40 CFR Parts 264 and 265 as indicated in Revision Checklists 17E. Land disposal includes, but is not limited to, placement in landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves. Deep injection well means a well used for the underground injection of hazardous wastes other than a well to which §7010(a) of RCRA applies.

[Federal Authority: RCRA §§3004(b)-(q); 40 CFR 264.18, 265.18.]

B. Effective on November 8, 1984 State statutes and regulations prohibit the placement of any non-containerized or bulk liquid hazardous waste in any salt dome or salt bed formation any underground mine or cave except as provided in §264.18(c) and §265.18(c) as indicated in Revision Checklist 17E. Furthermore, State statutes and regulations prohibit the placement of any other hazardous waste in such formations until a permit is issued.

[Federal Authority: RCRA §3004(b)(4); 40 CFR 264.18 and 265.18.]

C. State statutes and regulations prohibit the use of waste oil or other materials contaminated with hazardous wastes (except ignitable wastes) as a dust suppressant as indicated in Revision Checklist 17G.

[Federal Authority: RCRA §3004(1); 40 CFR 266.23.]

D. State statutes and regulations allow direct action by third parties against the insurer or guarantor of an owner/operator's financial responsibilities if an owner/operator is in bankruptcy reorganization or arrangement or where (with reasonable diligence) jurisdiction in any State or Federal Court cannot be

obtained over an owner/operator likely to be solvent at time of judgment.

[Federal Authority: RCRA §3004(t).]

E. State statutes and regulations require the permittee to take steps to minimize releases to the environment in accordance with 40 CFR Part 270.30(d) as amended September 1, 1983, as indicated in Revision Checklist 2.

[Federal Authority: RCRA §3005(c).]

F. State statutes and regulations require that closure and post-closure requirements and special requirements for containers apply to interim status landfills as indicated in Revision Checklist 15.

[Federal Authority: RCRA §3004; 40 CFR 265.310, .315 as amended April 23, 1985 (50 FR 16044).]

G. State statutes and regulations require compliance with closure/post-closure and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklist 24.

[Federal Authority: RCRA §§3004 and 3005, 40 CFR 260, 264, 265, and 270 as amended May 2, 1986 (51 FR 16422).]

H. State statutes and regulations allow companies that treat store or dispose of hazardous waste to demonstrate alternate coverage for liability insurance in the form of a corporate guarantee as indicated in Revision Checklist 27.

[Federal Authority: RCRA §§2002, 3004, and 3005, 40 CFR 264.147 and 264.151 as amended July 11, 1986 (51 FR 25350).]

I. State statutes and regulations require companies that generate, treat or store hazardous waste in containers to comply with tank standards equivalent to those indicated in Revision Checklist 28.

[Federal Authority: RCRA §§1006, 2002, 3001 - 3007, 3010, 3014, 3017 - 3019 and 7004; 40 CFR 260, 261, 262, 264, 265 and 270 as amended July 14, 1986 (51 FR 25422) and August 15, 1986 (512 FR 29430).]

XVI. REQUIREMENTS FOR PERMITS

A. State statutes and regulations allow a facility (1) to construct an approved TSCA facility for burning PCBs without first obtaining a RCRA permit and (2) to subsequently apply for a RCRA permit in accordance with Revision Checklist 17M.

[Federal Authority: RCRA §3005(a), 40 CFR 270.10(f)(3).]

B. State statutes and regulations require review of land disposal permits every five years and modification of such permits as necessary to assure compliance with the requirements in Parts 264, 266, and 270, as indicated in Revision Checklist 17N.

[Federal Authority: RCRA §3005(c)(3), 40 CFR 270.41(a)(6), .50(d).]

C. State statutes and regulations require permits to contain any conditions necessary to protect human health and the environment in addition to any conditions required by regulations as indicated in Revision Checklist 17O.

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.32]

D. State statutes and regulations required that:

- (1) For land disposal facilities granted interim status prior to 11/8/84, interim status terminates 11/8/85; unless a Part B application and certification of compliance with applicable groundwater monitoring and financial responsibility requirements are submitted by 11/8/85, as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(c).]

- (2) For land disposal facilities in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit and which is granted interim status, interim status terminates 12 months after the date the facility first becomes subject to such permit requirement unless a Part B application and certification of compliance with applicable groundwater monitoring and financial responsibility requirements are submitted by that date as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(d).]

- (3) Interim status terminates for incinerator facilities by 11/8/89 unless the owner/operator submits a Part B

application by 11/8/86 as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(C)(2)(C); 40 CFR 270.73(e).]

- (4) Interim status terminates for any facility other than a land disposal or an incinerator facility by 11/8/92 unless the owner/operator submits a Part B application by 11/8/88 as indicated in Revision Checklist 17P.

E. State statutes and regulations allow facilities to qualify for interim status if they (1) are in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirement to have a permit and (2) comply with §270.70(a) as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(d).]

F. State statutes and regulations provide that facilities may not qualify for interim status under that State's analogue to Section 3005(e) if they were previously denied a Section 3005(c) permit or if authority to operate the facility has been terminated as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.70(c).]

G. State statutes and regulations allow the issuance of a one-year research development, and demonstration permit (renewable 3x) for any hazardous waste treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated as indicated in Revision Checklist 17Q. If adopted, however, the State must require the facility to meet RCRA's financial responsibility and public participation requirements and retain authority to terminate experimental activity if necessary to protect health or the environment.

[Federal Authority: RCRA §3005(g); 40 CFR 270.65]

H. State statutes and regulations require landfills, surface impoundments, land treatment units, and waste piles that received waste after July 26, 1982 and which qualify for interim status to comply with the groundwater monitoring, unsaturated zone monitoring, and corrective action requirements applicable to new units at the time of permitting as indicated as Revision Checklist 17L.

[Federal Authority: RCRA §3005(i); 40 CFR 264.90(a).]

I. State statutes and regulations require:

(1) Surface impoundments in existence on November 8, 1984 [or subsequently becoming subject to RCRA pursuant to §3005(j)(6)(A) or (B)] to comply with the double liner, leachate collection, and groundwater monitoring requirements applicable to new units by November 8, 1988 [or the date specified in §3005(j)(6)(A) or (B)] or to stop treating, receiving, or storing hazardous waste, unless the surface impoundment qualifies for a special exemption under §3005(j).

[Federal Authority: RCRA §3005(j)(8).]

(2) Surface impoundments to comply with the double liner, leachate collections and ground-water monitoring requirements if the Agency allows a hazardous waste prohibited from land disposal under §3004(d), (e) or (g) to be placed in such impoundments.

[Federal Authority: RCRA §3005(j)(11).]

(3) State statutes and regulations may allow variances from the above requirements as provided in RCRA §3005(j)(2-9) and (13). However, the availability of such variances must be restricted as provided in RCRA §3005(j).

[Federal Authority: RCRA §3005(j)(2-9).]

J. Facility owners or operators are given the opportunity to cure deficient Part A applications in accordance with 40 CFR 270.70(b) before failing to qualify for interim status as indicated in Revision Checklist 6.

[Federal Authority: RCRA §3005; 40 CFR Part 270 as amended April 24, 1984 (49 FR 187716).]

XVII. MINIMUM TECHNOLOGICAL REQUIREMENTS

A. State statutes and regulations require that new units, expansions, and replacements of interim status waste piles meet the requirements for single liner and leachate collection system in regulations applicable to permitted waste piles as indicated in the Revision Checklist 17H.

[Federal Authority: RCRA §3015(a); CFR 265.254]

B. State statutes and regulation require that:

(1) New units, expansions, and replacement units at interim status landfills and surface impoundments and permitted landfills and surface impoundments meet the requirements for double

liners and leachate collection systems applicable to new permitted landfills and surface impoundments in 40 CFR 264.221 and .301 and 265.221 and .301 as indicated in Revision Checklist 17H.

(2) Facilities which comply in good faith need not retrofit at permit issuance unless the liner is leaking as provided in §§265.221(e) and 265.301(e) as indicated in Revision Checklist 17H.

(3) Variances from the above requirements are optional. However, the availability of such variances is restricted as provided in §§265.221(c) and 265.301.(c) as indicated in Revision Checklist 17H.

[Federal Authority: RCRA §3015(b); 40 CFR 264.221 and 265.221.]

XVIII. EXPOSURE ASSESSMENTS

A. State laws and regulations require permit applicants for landfills or surface impoundments to submit exposure information as indicated in Revision Checklist 17S.

[Federal Authority: RCRA §3019(a); 40 CFR 270.10(j).]

B. State laws and regulations allow the State to make assessment information available to the Agency for Toxic Substances and Disease Registry. (See CERCLA §104(i).)

XIX. BURNING OF WASTE FUEL AND USED OIL FUEL IN BOILERS AND INDUSTRIAL FURNACES

A. State statutes and regulations contain the following requirements regarding the burning of waste fuel and used oil fuel for energy recovery in boilers and industrial furnaces as indicated in Revision Checklist 19:

(1) Waste fuels and used oil fuels are identified as solid wastes so as to encompass all such wastes controlled under 40 CFR 261.3, 261.5 and 261.6.

(2) Special management standards for generators, transporters, marketers and burners of hazardous waste and used oil burned for energy, as provided in 40 CFR 264.340, 265.340, 266.30-35 and 266.40-45.

[Federal Authority: §§3001, 3004, 3014(a); 40 CFR Parts 261, 264, 265 and 266 as amended November 29, 1985 [50 FR 49164 - 49212], November 19, 1986 [51 FR 41900 - 41904] and April 13, 1987 [52 FR 11819 - 11822].]

B. State statutes and regulations provide the authority to obtain criminal penalties for violations of the waste fuel and used oil fuel requirements, as provided in 40 CFR 266.40-45.

[Federal Authority: §3006(h), §3008(d), 3014; 40 CFR 271.16]

XXI. LAND DISPOSAL RESTRICTIONS

A. State statutes and regulations provide for the restrictions of the land disposal of certain spent solvents and dioxin-containing hazardous wastes as indicated in Revision Checklist 34.

[Federal Authority: §3004(d)-(k) and (m); 40 CFR Parts 260, 261, 262, 263, 264, 265, 268 and 270 as amended on November 7, 1986 (51 FR 40572) and as amended on June 4, 1987 (52 FR 21010).]

SEAL OF OFFICE



Jim Mattox,
Attorney General of Texas

April 11, 1990

Date