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REVISED PROGRAM DESCRIPTION
STATE OF TEXAS
TEXAS WATER COMMISSION
HAZARDOUS WASTE PROGRAM

AUGUST 1, 1988

INTRODUCTION

Through this application, the State of Texas seeks authorization for a revision to its authorized hazardous waste management program. The State received final program authorization from the U.S. Environmental Protection Agency (EPA) on December 26, 1984.

Pursuant to 40 Code of Federal Regulations (CFR) Section 271.21, the State is submitting this application to reflect recent revisions and to assure that the authorized state hazardous waste program remains equivalent to the federal hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended.

DEFINITION OF HAZARDOUS WASTE

In 31 Texas Administrative Code (TAC) Section 335.1, a definition of hazardous waste is included which tracks the statutory definition of hazardous waste in the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7. In this definition "hazardous waste" means "any solid waste identified or listed as hazardous waste by the Administrator of the United State Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, 42 United States Code, Section 6901 et seq., as amended." In 40 CFR Part 261, EPA has promulgated regulations that identify or list hazardous waste. Therefore, all of 40 CFR Part 261 that functions in the identification and listing of hazardous waste, including the appendices, is incorporated by reference in the TWC regulations by virtue of the TWC definition of hazardous waste. The universe of hazardous waste in Texas is identical to the federal RCRA universe of hazardous waste as a result of this definition.

By operation of the Statutory and regulatory definitions of hazardous waste in Texas, the following identifications and listings of hazardous waste by the EPA are included in the universe of hazardous waste in the state:

- (1) Corrections to listing of Commercial Chemical Products and Appendix VIII Constituents - - published August 6, 1986 at 51 Federal Register 28296-28310 (RCRA Revision Checklist 29).
- (2) Listing of EBDC - - published October 24, 1986 at 51 Federal Register 21306-21307 (RCRA Revision Checklist 37).
- (3) Definition of Solid Waste Technical Corrections - - published June 5, 1987 at 52 Federal Register 21306-21307 (RCRA Revision Checklist 37).

BIENNIAL REPORT CORRECTION

The TWC regulations at 31 TAC 335.114 (Interim Standards for owners and operators of hazardous waste storage, processing, or disposal facilities) and at 31 TAC 335.154 (permitting standards for owners and operators of hazardous waste storage, processing, or disposal facilities) have been amended to be equivalent in the Federal Register issue of August 8, 1986 regarding reporting of waste minimization efforts, description of changes in volume and toxicity annual comparison, and certification signature by the owner/operator. The enclosed RCRA revision checklist 30 provides specific references on the correspondence of the TWC regulations to the EPA regulations. In Texas, the TWC regulations require annual reporting rather than biennial reporting, and; therefore, the TWC regulations are more stringent than the federal requirements.

EXPORTS OF HAZARDOUS WASTE

The TWC has amended the provisions of 31 TAC Chapter 335, Subchapters A and C concerning definitions, and record keeping and reporting to be equivalent to the federal regulatory provisions appearing in the Federal Register issue of August 8, 1986 (51 FR 28664-28686). The enclosed checklist 31 provides specific references on the correspondence of the TWC regulations to the EPA regulations.

WASTE MINIMIZATION CERTIFICATIONS

The TWC has amended the provision of 31 TAC Chapter 35, Subchapter A regarding the uniform hazardous waste manifest (RCRA Revision checklist 32). The TWC form is the same as EPA form 8700-22, with modifications for the State program. Copies of the TWC forms appear in Appendix I to Subchapter A of Chapter 335.

LAND DISPOSAL RESTRICTIONS

The TWC has amended 31 TAC, Subchapters A, B, C, D, and F and adopted Subchapter O which except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the Rules of the Commission, incorporated by reference the land disposal regulations contained in 40 CFR 268, Subpart A, C-e and Appendices I and II, which are in effect as of June 4, 1987. This regulation reflects the original Land Disposal Restrictions adopted November 7, 1986 at 51 Federal Register 40572-40654 and corrections which appeared June 4, 1987 at 52 Federal Register 21010 - 21018. Incorporation by reference of the land disposal restrictions has also been made by amendments to 31 TAC 305, Subchapter C, D, and F regarding Permit applications, conditions, and modifications. RCRA revision checklist 34 provides specific references on the correspondence of TWC regulations to the EPA regulations. The TWC program is identical to the federal program.

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The TWC regulations at 31 TAC 335.125(d) (relating to special requirements for bulk and containerized liquids applicable as interim standards for owners and operators of hazardous waste facilities) and at 31 TAC 335.175(c) (relating to special requirements for bulk and containerized liquids applicable as permitting standards for owners and operators of hazardous waste facilities) reference publication SW-846. As indicated on RCRA revision checklist 35, this reference accommodates the announcement published March 16, 1987 in 52 Federal Register 8072-8073.

CLOSURE/POST-CLOSURE CARE FOR INTERIM STATUS SURFACE IMPOUNDMENTS

The TWC has amended 31 TAC 33T.112(a)(10) relating to interim standards for owners and operators of hazardous waste storage, processing, or disposal facilities to incorporate by reference the surface impoundment closure/post-closure standards published March 19, 1987 in 52 Federal Register 8704-8709. The amendment incorporates regulations in 40 CFR Part 265 (including all appendices to Part 265) which are in effect as of June 4, 1987. RCRA revision checklist 36 provides specific references of TWC regulations to EPA regulations. The TWC program; is therefore, identical to the EPA program.

BURNING OF WASTE FUEL

The TWC has amended 31 TAC 33T.1 to include a definition of "used oil" and Subchapter H relating to hazardous waste burned for energy recovery. These amendments make the TWC program consistent with the EPA program and requirements as published April 13, 1987 at 52 Federal Register 11819-11822.

AMENDMENTS TO PART B INFORMATION REQUIREMENTS

The TWC has amended 31 TAC 305 to require submittal of corrective action information in the Part B permit application. Specific regulatory references are listed on RCRA revision checklist 38. The TWC program is consistent with the EPA program.

INSPECTION/ENFORCEMENT CAPABILITIES

The Texas Solid Waste Disposal Act, Article 4477-7, Section 8b, contains language which authorizes the Texas Water Commission to assess a civil penalty against the person who "violates the provisions of this Act relating to solid waste under the jurisdiction of the Commission or a rule or order relating to solid waste under the jurisdiction of the Commission adopted or a solid waste permit or registration issued by the Commission under this Act." The regulations implementing the Commission's administrative penalty authority are found in 31 TAC Chapter 337, entitled "Enforcement". The Commission may assess a civil penalty against that person in an amount not to exceed \$10,000 per day for a person who violates this chapter or a rule, order or permit. Although the State Solid Waste Disposal act

authorizes a civil penalty of up to \$10,000 per day, the Act also requires that the Commission consider three categorical areas in determining the specific amount of the civil penalty. These three categorical areas are specified in Section 8b(c) of the Act and for purposes of this description include:

- (1) Factors which influence the hazard or potential hazards presented to the health or safety of the public;
- (2) The impact of the violation on waters in the state and on water users of the impacted waters; and
- (3) Factors which relate to the violator.

In carrying out the provisions of the Act, the Commission is required to:

- (1) Through the Executive Director, examine the alleged violation and the facts surrounding the alleged violation and reach a conclusion concerning whether a violation occurred; and
- (2) If the Executive Director concludes that a violation has occurred, he then may issue a preliminary report which states the facts upon which the violation is based and recommends the imposition and amount of a civil penalty.

The remaining portion of Section 8b of the Act addresses substantive procedures relating to such matters as providing notice of violation, the responsibility of the charged person in responding to the notice, the right of a charged person to an administrative hearing and decision on the charges based upon evidence received during the hearing, the responsibility for the person in regard to payment of the civil penalty, referral to the Attorney General for nonpayment, and the right of a person to appeal an order or penalty to a state district court in Travis County for judicial review. Civil penalties assessed by the Commission are required under Section 8b(m) of the Act to be deposited in the State Treasury to the credit of the General Revenue Fund.

The Executive Director's staff provides the administrative structure for enforcement of provisions of the Solid Waste Disposal Act as well as other relevant areas of Commission responsibility under its jurisdiction. Key functional areas concerned with the enforcement process include:

- (1) Inspections. Alleged solid waste violations are discovered and documented during inspections which are largely the responsibility of the Field Operations Division. Inspections may be routinely scheduled events to assess compliance at facilities holding permits or other Commission orders or they may be conducted to investigate complaints. A written inspection report is always prepared and

submitted. A written referral for enforcement action is also submitted in those instances where noncompliances have been documented.

- (2) Enforcement referral review. Referrals for enforcement action along with all supporting documentation are reviewed by the staff of the Executive Director representing the Hazardous and solid Waste Division, the Legal Division and the Field Operations Division. Documentation of each alleged violation is critically reviewed to ensure that the facts associated with each violation have been properly investigated. Enforcement referrals which have been adequately investigated are transmitted to the Hazardous and Solid Waste Division for additional action which includes facts meetings and preparation of Executive Director preliminary reports.
- (3) Facts Meetings. After receiving a referral for enforcement actions, the Hazardous and Solid Waste Division sends a letter by certified mail to the entity. This letter describes the alleged solid waste violations and invites the entity to schedule a facts meeting. The purpose of the facts meeting is to provide a forum for the affected entity to respond to alleged violations and to allow members of the Executive Director's staff an additional opportunity to examine the facts surrounding the alleged violation.
- (4) Preliminary Report. If investigation of the facts surrounding an alleged violation supports the conclusion that a violation has occurred, the Hazardous and Solid Waste Division will then prepare an Executive Director's Preliminary Report. The report lists and explains violations, recommends corrective action and recommends the imposition and amount of the civil penalty. The amount of civil penalty is determined first by considering the hazard, extent of gravity of the violation; after this, the impact of the violation is considered. Final penalty adjustment is made after considering the five factors which apply to the violator as described in Section 8b(c)(3). All penalty amounts with adjustments for each violation are shown and explained in the preliminary report.

After the Executive Director decides to issue a preliminary report which describes the factual basis surrounding the violation, Section 8b of the Solid Waste Disposal Act prescribes certain actions which preserve certain rights of a person accused of a violation under the Act and also affords the Commission the power to collect penalties assessed under the Act. In this regard, the following procedures and rights are specified in Section 8b:

- (1) Notice of preliminary report. Within 10 days after a preliminary report is issued, the Executive Director is required to provide written notice to the person charged

with a violation, a summary of the charges, the penalty amount assessed and advise the person of his right to an evidentiary hearing, as described in Section 8b(e).

- (2) Response to notice of the preliminary report. A person who is charged with a violation and receives notice of a preliminary report issued pursuant to Section 8b of the Act must either provide written consent to the Executive Director's preliminary report or make a written request for an evidentiary hearing within 20 days after receipt of notice. If the charged person fails to respond within the allotted time frame, the Commission may assess the penalty or order an evidentiary hearing to be conducted.
- (3) Evidentiary Hearings. If a written request is received from the charged person, the Commission is required to call an evidentiary hearing and issue public notice of the hearing in a newspaper from the locality of where the charged person resides. All proceedings associated with the evidentiary hearing are subject to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. The Office of Hearings Examiners has the functional responsibility of conducting the hearings and issuing a report to the Commission prepared by a hearings examiner after receiving evidence and testimony. The hearings examiner's report is considered by the Commission and, based upon the findings of fact and conclusions of law contained in the report, the Commission may assess a civil penalty for the violation.
- (4) Payment of Penalty; Appeal for Judicial Review. A person who is assessed a penalty is required to pay the penalty in full within 30 days of the date of penalty assessment unless the Commission decision is appealed to a district court in Travis County. If the penalty is appealed, the person against whom the penalty is assessed is required to forward payment in the penalty amount to the Commission for placement in an escrow account or, alternatively, post a supersedeas bond in the amount of the penalty with the Commission.
- (5) Action taken against nonpayment. If the person against whom the Commission has assessed a penalty fails to pay the penalty or post a bond, the Executive Director is then authorized to refer the matter to the Attorney General for enforcement.

FUNDING AND RESOURCES

- (1) Description of Staff

Administration of the RCRA Program (including these revisions) involves approximately \$8.1 million dollars and 140 man years effort. No estimate is made for the revisions only.

(2) Funding

The TWC budget for RCRA is funded by a grant from EPA and a generation fee. In FY 88 the funding ratio is expected to be 52% from EPA grants and 48% from TWC matching fee monies.

(3) Estimated Number of Regulated Activities

See Table 1

TABLE 1

Estimated Activities Subject to Program Revision Requirements

TYPE OF ACTIVITY	NUMBER OF HANDLERS	WASTE QUANTITIES
Generators	7,276	64 million Tons
Transporters	134	*
Storage - on-site	123	*
- off-site	26	
Treatment - on-site	123	*
- off-site	26	
Disposal - on-site	47	*
- off-site	12	
Transported into the State	////////////////////	145,000 Tons
Transported out of State	////////////////////	200,000 Tons

* The data management system does not provide information in this manner.