

US EPA ARCHIVE DOCUMENT

§ 361.016. Memorandum of Understanding by Board of Health

The board of health by rule shall adopt:

- (1) any memorandum of understanding between the department and any other state agency; and
- (2) any revision of a memorandum of understanding.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1987, 70th Leg., ch. 279, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 3(i).

§ 361.017. Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste

(a) The commission is responsible for the management of industrial solid waste and hazardous municipal waste and shall coordinate industrial solid waste activities and hazardous municipal waste activities.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of industrial solid waste and hazardous municipal waste by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

(d) In matters under the commission's jurisdiction, the commission shall consult with:

- (1) the department concerning the public health aspects;
- (2) the Texas Air Control Board¹ concerning the air pollution control and ambient air quality aspects; and
- (3) the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the agency's discretion, for the disposition of enforcement matters under this chapter.

(e) If referral is determined to be mandatory or appropriate, the agency shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The agency shall use all available enforcement options.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.03, eff. Sept. 1, 1991.

¹ The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.

Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1977, 65th Leg., p. 2340, ch. 870, § 3.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 795, §§ 1.163, 7.001.

Vernon's Ann.Civ.St. art. 4477-7, § 3(b).

§ 361.018. Commission's Jurisdiction Over Hazardous Waste Components of Radioactive Waste

(a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation of the management of hazardous waste components of radioactive waste under the department's jurisdiction.

(b) The commission shall consult with the department concerning regulation and management under this section.

(c) The commission may not adopt rules or engage in management activities under this section that conflict with state or federal laws and rules concerning the regulation of radioactive waste.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.

Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 795, § 7.001.

Vernon's Ann.Civ.St. art. 4477-7, § 3(d).

§ 361.019. Approval of Industrial Solid Waste Management in Municipal Solid Waste Facility

(a) Except as provided by Subsection (b), Class I nonhazardous industrial solid waste and small quantities of hazardous waste generated by conditionally exempt small quantity generators, as defined by the commission, may be accepted in a municipal solid waste facility if:

(1) authorized in writing by, or by rule of, the department with the written approval of, or by rule of, the commission; and

(2) the generator of the Class I nonhazardous waste certifies on an appropriate commission form that the waste is not a hazardous waste.

(b) Except as otherwise prohibited by this chapter, nonhazardous industrial solid waste generated by the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals shall be accepted, without authorization by the department or approval of the commission under Subsection (a), in a municipal solid waste facility that has previously been authorized to accept and has accepted Class I nonhazardous industrial

bles for permits that are determined to be administratively complete, with specific deadlines for each major step in the processing under the control of the commission and hearing procedures. Deadlines under the control of the commission do not include time the commission waits for the receipt of information from an applicant in order to properly review the application. Those deadlines under the control of the commission shall be met unless the executive director finds that the delay is necessary and lists the reasons that the deadlines cannot be met. It is the legislature's intent that permit applicants whose applications address technologies that are most needed as determined under Section 361.0234, Health and Safety Code, as added by this article, receive an ultimate determination on an administratively complete application, favorable or unfavorable, within two years of the date the application is determined to be administratively complete, excluding time not under the control of the commission.

"(b) As part of this study, the Texas Water Commission shall consider mechanisms for encouraging applicants and local communities to cooperate with each other in the siting of new hazardous waste management facilities. The commission shall, at a minimum, consider the creation of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant provides opportunities for citizens to ask questions about the permit application or the draft permit, and any necessary revisions to the local review process provided by Section 361.063, Health and Safety Code. The commission

shall report its findings, recommendations, and a summary of the rules adopted under Subsection (a) of this section to the legislature before January 1, 1993.

"Sec. 1.27. If necessary, the Texas Water Commission, the Texas Air Control Board, and the Texas Department of Health shall enter into memoranda of understanding to establish procedures and carry out this article.

"Sec. 1.28. If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in implementing the application procedures required under this article, the appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency."

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.030 amended § 1.25 of Acts 1991, 72nd Leg., ch. 296 by adding (h) to read as follows:

"It is the policy of this state to encourage waste minimization through recycling. Therefore, the provisions of this article do not apply to any hazardous waste management facility that, before or during a recycling process, stores hazardous waste if the hazardous waste management facility engages only in storage incidental to a recycling process that does not include any treatment or disposal of hazardous waste by incineration, landfilling, or deep well injection on site. This subsection only applies to applications pending at the Texas Water Commission on the effective date of this article and does not apply to any commercial hazardous waste management facilities that burn waste-derived fuel."

§ 361.024. Rules and Standards

(a) The board of health and the commission may each adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of the solid waste under their respective jurisdictions under this chapter.

(b) In developing rules concerning hazardous waste, the commission shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources.

(c) The minimum standards set by the commission for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.

(d) Rules adopted by the commission under Section 361.036 and Sections 361.097-361.108 for solid waste facilities may differ according to the type or hazard of hazardous waste managed and the type of waste management method used.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.025. Exempt Activities

(a) The commission and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities that are associated with oil and gas exploration, development, and production and are therefore exempt from regulation under this chapter.

(b) The list shall be adopted by rule and amended as necessary.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 566, § 2.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1985, 69th Leg., ch. 931, art. 8, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 3(f).

§ 361.026. Assistance Provided by Department and Commission

(a) The department and the commission may individually or jointly:

(1) provide educational, advisory, and technical services concerning solid waste management to other state agencies, regional planning agencies, local governments, special districts, institutions, and individuals; and

(2) assist other state agencies, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for:

(A) the development of solid waste facilities and management programs; and

(B) research to improve solid waste management.

(b) The department or the commission individually may engage in the programs and activities under this section only as the participation by it concerns the management and control of the solid waste under its jurisdiction.

(c) If the department and the commission do not participate jointly, each shall coordinate efforts undertaken individually so that separate but similar programs and activities are compatible.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Vernon's Ann.Civ.St. art. 4477-7, § 4(h).

purposes in the manner prescribed by law and in accordance with agreements as are necessary and appropriate between the federal government and the agency.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.

Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Vernon's Ann.Civ.St. art. 4477-7, § 4(h).

§ 361.031. Financial Assistance to Local Governments

(a) The department and the commission may administer and spend state funds provided to them by legislative appropriations, or otherwise, to make grants to local governments for:

- (1) solid waste planning;
- (2) installation of solid waste facilities; and
- (3) administration of solid waste programs.

(b) The grants made under this chapter shall be distributed in a manner determined by the state agency to which the appropriation is made.

(c) The amount of financial assistance granted by the state through the department or commission to a local government under this chapter must be matched by local government funds at least in equal amounts.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.

Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1981, 67th Leg., p. 3170, ch. 831, § 1 to 8, 10.

Vernon's Ann.Civ.St. art. 4477-7, § 4(i).

§ 361.032. Inspections; Right of Entry

(a) The department and the commission are each authorized to inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of the solid waste under the agency's jurisdiction.

(b) Agents or employees of the department, the commission, or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control.

(c) Agents or employees may not enter private property with management in residence without notifying the management, or the person in charge at the time, of their presence and presenting proper credentials.

(d) Agents or employees inspecting an establishment shall observe the establishment's rules on safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 795, § 1.165.
Vernon's Ann.Civ.St. art. 4477-7, §§ 4(d); 7(a).

Cross References

Registry and cleanup of certain hazardous waste facilities, investigations, see § 361.182.

§ 361.033. Inspections Required by Environmental Protection Agency

(a) The commission shall inspect regulated hazardous waste management and disposal facilities periodically as required by the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(b) In supplementing the inspections under Subsection (a), the commission shall give priority to inspecting and reinspecting those facilities, including generators, considered most likely to be in noncompliance or most likely to pose an environmental or public health threat, regardless of whether the facilities are characterized as major or non-major facilities.

(c) The commission may randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the United States Environmental Protection Agency.

Acts 1989, 71st Leg., ch. 678, § 1. eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 566, § 8.
Acts 1985, 69th Leg., ch. 795, § 1.165.
Vernon's Ann.Civ.St. art. 4477-7, § 7(c).

Cross References

Registry and cleanup of certain hazardous waste facilities, investigations, see § 361.182.

§ 361.034. Reports

(a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed industrial solid waste and hazardous waste fees authorized under Subchapter D¹ and related activities to determine the appropriateness of the fee structures;

(2) an evaluation of progress made in accomplishing the state's public policy concerning the preference of waste management methods under Section 361.023;

Historical and Statutory Notes

The 1990 amendment, to conform to Acts 1989, 71st Leg., ch. 705, § 2, inserted subsec. (a) designation and added subsec. (b).

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
 Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
 Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
 Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
 Acts 1985, 69th Leg., ch. 457, § 1.
 Acts 1985, 69th Leg., ch. 464, § 2.
 Acts 1985, 69th Leg., ch. 566, §§ 4, 5.
 Acts 1987, 70th Leg., ch. 279, §§ 3 to 6.
 Acts 1987, 70th Leg., ch. 299, § 1.
 Acts 1987, 70th Leg., ch. 638, §§ 7 to 9.
 Acts 1987, 70th Leg., ch. 781, § 1.
 Acts 1989, 71st Leg., ch. 705, § 2.
 Vernon's Ann.Civ.St. art. 4477-7, § 4(e).

§ 361.0641. Notice to State Senator and Representative

On receiving an application for, or notice of intent to file an application for, a permit to construct, operate, or maintain a facility to store, process, or dispose of solid waste or hazardous waste, the department or commission, as appropriate, shall send notice of the application or the notice of intent to the state senator and representative who represent the area in which the facility is or will be located.

Added by Acts 1991, 72nd Leg., ch. 236, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 3 of the 1991 Act provides:

"This Act takes effect September 1, 1991, and applies only to an application for a permit or

to a notice of intent to apply for a permit received by the Texas Department of Health, the Texas Water Commission, or the Texas Air Control Board on or after that date."

§ 361.065. Repealed by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 3, § 1, eff. Sept. 6, 1990

Historical and Statutory Notes

The former section, relating to the permit application fee, was repealed to conform to Acts 1989, 71st Leg., ch. 1143, § 6, and was derived from:

Acts 1969, 61st Leg., p. 1320, ch. 405.
 Acts 1971, 62nd Leg., p. 2631, ch. 863.
 Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
 Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 239, § 54.
 Acts 1985, 69th Leg., ch. 457, § 3.
 Acts 1985, 69th Leg., ch. 566, § 7.
 Acts 1985, 69th Leg., ch. 887, § 1.
 Acts 1985, 69th Leg., ch. 931, art. 8, § 2.
 Vernon's Ann.Civ.St. art. 4477-7, § 4(k)(1), (4).
 Acts 1989, 71st Leg., ch. 678, § 1.

§ 361.066. Submission of Administratively Complete Permit Application

(a) An applicant must submit any portion of an application that the department or the commission determines is necessary to make the application administratively complete not later than the 270th day after the applicant receives notice from the department or the commission that the additional information or material is needed.

(b) If an applicant does not submit an administratively complete application as required by this section, the application is considered withdrawn, unless there are extenuating circumstances.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.

Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.

Acts 1985, 69th Leg., ch. 566, § 4.

Acts 1987, 70th Leg., ch. 299, § 1.

Vernon's Ann.Civ.St. art. 4477-7,
§ 4(e)(4)(B).

§ 361.0665. Notice of Intent to Obtain Municipal Solid Waste Permit

(a) A person who applies for a municipal solid waste permit shall publish notice of intent to obtain a permit under this chapter at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

(b) Notice must include:

- (1) a description of the location or proposed location of the facility;
- (2) a statement that a person who may be affected by the facility or proposed facility is entitled to request a hearing from the department;
- (3) the manner in which the department may be contacted for further information; and
- (4) any other information that the department by rule requires.

(c) If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located as defined by department rule.

(d) In addition, the department shall publish notice in the Texas Register.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 13(a), eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Law:

Acts 1989, 71st Leg., ch. 583, § 1.

Vernon's Ann.Civ.St. art. 4477-7,
§ 4(e)(4)(B).

§ 361.067. Review of Permit Application by Other Governmental Entities

(a) If the department or the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to:

- (1) the Texas Air Control Board;¹
- (2) the other state agency;

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- (3) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and
- (4) the county judge and the health authority of the county in which the facility is located.

(b) A governmental entity to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to which the application was originally submitted, to present comments and recommendations on the permit application before the agency acts on the application.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

¹ The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(1).

§ 361.068. When Application is Administratively Complete

A permit application is administratively complete when:

- (1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the department or the commission; and
- (2) the permit application is ready for technical review in accordance with the rules of the board of health or commission.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Historical and Statutory Notes

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 566, § 1.
Acts 1985, 69th Leg., ch. 795, § 1.160.
Acts 1987, 70th Leg., ch. 279, § 1(a), (b).
Vernon's Ann.Civ.St. art. 4477-7, § 2(1).

§ 361.069. Determination of Land Use Compatibility

The department or the commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.