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TEXAS WATER COMMISSION
Permanent Rule Change

Chapter 305
Consolidated Permits
Subchapters

A, B, C, D, E, F, G, I, J, O, and P

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 makes adoptions to 31 Texas Administrative Code (TAC) Chapter 305, Consolidated Permits. Sections 305.48, 305.106, 305.122, 305.126, 305.534-305.536 and 305.538 are adopted with changes to the proposed text as published in the July 24, 1990, issue of the Texas Register (15 TexReg 4191). Sections 305.1-305.3, 305.21-305.23, 305.43, 305.44, 305.46, 305.50, 305.62-305.63, 305.96, 305.100-305.101, 305.121, 305.125, 305.127-305.129, 305.531-305.533, and 305.537 are adopted without changes. The adoption of these rules may be found in the September 21, 1990 issue of the Texas Register (15 TexReg 5492). These amendments are effective on October 8, 1990.

The Texas Water Commission also adopts amendments to §§305.42, 305.51, 305.53, 305.61-305.64, 305.92-305.93, 305.96, 305.98, 305.99, 305.102-305.106, 305.127, 305.144, 305.171, 305.172, 305.174, 305.184, and new §305.69. Sections 305.62, 305.63 and 305.106, are adopted with changes to the proposed text as published in the August 21, 1990 issue of the Texas Register (15 TexReg 4759). Sections 305.42, 305.51, 305.53, 305.61, 305.64, 305.92, 305.93, 305.96, 305.98, 305.99, 305.102-305.105, 305.127, 305.144, 305.171, 305.172, 305.174, 305.184 and 305.69 are adopted without changes to the proposed text. The adoption of these rules may be found in the October 12, 1990 issue of the Texas Register (15 TexReg 6015). These amendments are effective on October 29, 1990. Please replace subchapters A, B, C, D, E, F, G, I, J, O, and P with the attached. Also attached is a Chapter 305 index reflecting a new printing date and any new changes brought about by this adoption.

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Subchapter A
General Provisions
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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.

§305.1. Scope and Applicability.

- (a) 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.
- (b) The national pollutant discharge elimination system (NPDES) program, as delegated to the State of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system. The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in Texas Water Code, §26.001.
 - (1) The following are point sources requiring TPDES permits for discharges:
 - (A) concentrated animal feeding operations as defined in Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations);
 - (B) concentrated aquatic animal production facilities as defined in 40 Code of Federal Regulations (CFR) §122.24;
 - (C) discharges into aquaculture projects as set forth in 40 CFR §122.25;
 - (D) stormwater discharges as set forth in 40 CFR §122.26; and
 - (E) silvicultural point sources as defined in 40 CFR §122.27.
 - (2) The Texas pollutant discharge elimination system (TPDES) permit program also applies to owners or operators of any treatment works treating domestic sewage, unless all requirements implementing the Clean Water Act (CWA), §405(d), applicable to the treatment works treating domestic sewage are

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included in a permit issued under the appropriate provisions of Subtitle C, the Federal Solid Waste Disposal Act, the Safe Drinking Water Act, Part C, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the regional administrator as adequate to assure compliance with the CWA, §405.

- (3) The executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA, §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement of basis for the permit.

§305.2. Definitions. The definitions contained in the Texas Water Code §§26.001, 27.002, and 28.001, and the 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.

Bypass - The intentional diversion of a waste stream from any portion of a treatment facility.

Class I sludge management facility - Any publicly owned treatment works (POTW) identified under 40 Code of Federal Regulations, §403.10(a) as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

Continuous discharge - A discharge which occurs without

interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

CWA - Clean Water Act (formerly referred to as the Federal Water Pollution and Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 United States Code 1251 et seq.

Daily average concentration - The arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

Daily average flow - The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

Direct discharge - The discharge of a pollutant.

Discharge Monitoring Report (DMR) - The Environmental Protection Agency (EPA) uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

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.

Effluent limitation - Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

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Environmental Protection Agency (EPA)- The United States Environmental Protection Agency.

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.

Indirect discharger - A nondomestic discharger introducing pollutants to a publicly owned treatment works.

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.

National Pollutant Discharge Elimination System (NPDES) - The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405. The term includes an approved program.

New discharger -

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective NPDES permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

New source - Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under CWA, §306; or

(B) after proposal of standards of performance in

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accordance with CWA, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

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.

Primary industry category - Any industry category listed in 40 Code of Federal Regulations Part 122 Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

Process wastewater - Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

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.

Publicly owned treatment works (POTW) - Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

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.

Recommencing discharger - A source which recommences discharge after terminating operations.

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Regional administrator - Except when used in conjunction with the words "State Director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Water Commission, or to the Texas Water Commission, consistent with the organization of the agency as set forth in the Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "State Director" in such regulations, regional administrator means the Regional Administrator for the Region VI Office of the EPA or his or her authorized representative. A copy of 40 Code of Federal Regulations Part 122 is available for inspection at the library of the Texas Water Commission, located in Room B-20 of the Stephen F. Austin State Office Building, 1700 North Congress, Austin.

Schedule of compliance - A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with the CWA and regulations.

Severe property damage - Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge.

Sewage sludge - The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

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.

Texas Pollutant Discharge Elimination System (TPDES) - The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405, the Texas Water Code, and Texas Administrative Code regulations.

Toxic pollutant - Any pollutant listed as toxic under the CWA, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing CWA, §405(d).

Treatment works treating domestic sewage - A POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or

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municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

Variance - Any mechanism or provision under the CWA, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the Texas Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA or this title.

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

Wetlands - Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

§305.3. Abbreviations. The following abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

CFR - Code of Federal Regulations.

CWA - Clean Water Act.

DMR - Discharge Monitoring Report.

EPA - United States Environmental Protection Agency.

NPDES - National Pollutant Discharge Elimination System.

POTW - Publicly owned treatment works.

TPDES - Texas Pollutant Discharge Elimination System.

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Subchapter B
Emergency Orders, Temporary Orders,
and Executive Director Authorizations
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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.

§305.21. 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, where the discharge is regulated by a Texas pollutant discharge elimination system (TPDES) permit or where a TPDES permit is not required, 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 this 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 (other than economic loss caused by delays in production) 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;

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- (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;
 - (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.
- (d) This section does not apply to unpermitted facilities subject to TPDES regulation.

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, where the discharge is regulated by a Texas pollutant discharge elimination system (TPDES) permit or where a TPDES permit is not required, 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 injury, severe property damage, or severe economic loss (other than economic loss caused by delays in production) 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,

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- 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 or unpermitted facilities subject to TPDES regulation.

§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 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

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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

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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).

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Subchapter C
Application for Permit.
§§305.42, 305.51, 305.53

These sections are promulgated under §§5.103 and 5.105 of the Texas Water Code and §§361.017 and 361.024(a) of the Texas Solid Waste Disposal Act which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act 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, modification 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, Tex. Health and Safety Code Ann. Chapter 361, §361.082(e) 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 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 Health and Safety Code Ann. Chapter 361 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

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Code of Federal Regulations §270.73 and certify that such a facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

§305.43. Who Applies.

- (a) It is the duty of the owner of a facility to submit an application for a permit; however, if the facility is owned by one person and operated by another and the executive director determines that special circumstances exist where the operator or the operator and the owner should both apply for a permit, and for all Texas pollutant discharge elimination system (TPDES) permits, it is the duty of the operator and the owner 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) All applications shall be signed as follows:
 - (1) 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 decision-making 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.
 - (2) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.
 - (3) 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).

- (b) A 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."
- (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

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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.
- (h) For Texas pollutant discharge elimination system (TPDES) applications, information required by §305.45 of this title (relating to Contents of Application for Permit) will not be considered confidential. This includes information submitted on the forms themselves and any

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attachments used to supply information required by the forms.

§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.

- (a) 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, including but not limited to the following:
 - (A) the operator's name, address, and telephone number;
 - (B) whether the facility is located on Indian lands;
 - (C) up to four standard industrial codes (SIC) which best reflect the principal products or services provided by the facility.
- (b) The following regulations contained in 40 Code of Federal Regulations Part 122, which are in effect as of the date of TPDES program authorization, as amended, are adopted by reference:
 - (1) Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(g), providing application requirements for existing

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- manufacturing, commercial, mining, and silvicultural dischargers;
- (2) Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(h), providing application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only non-process wastewater, except 40 Code of Federal Regulations §122.21(h)(4)(iii), the requirements of which are addressed in §305.126(e) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits);
 - (3) Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(i), providing application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

§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) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Plugging and Abandonment Standards) will be attained;
 - (5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;
 - (6) the manner in which compliance with the post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;
 - (7) 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

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- stratum selected for disposal will not endanger or injure any oil or gas formation;
- (8) for Class III wells, a description of all liquid and solid non-radioactive wastes resulting from mining activities;
 - (9) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and
 - (10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in the Texas Water Code, §27.051(a).
- (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, including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).
- (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 and 270.23, 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 and 270.23. 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.

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- (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.

§305.51. Revision of Applications for Hazardous Waste Permits.

- (a) Owners or operators of hazardous waste management facilities, who qualify for interim status pursuant to 40 CFR Part 270, Subpart G, who have continuing authority to store, process, and/or dispose of hazardous waste pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and who filed a Part A permit application pursuant to 40 Code of Federal Regulations §270.10 shall file a revised Part A application with the executive director for any of the following changes during interim status:
 - (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;

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- (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:

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- (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, amended, or modified 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.

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Subchapter D
Amendments, Modifications, Renewals, Transfers, Corrections,
Revocation, and Suspension of Permits
§§305.61-305.64, 305.69

These sections are promulgated under Texas Water Code, §§5.103 and 5.105, and §§361.017 and 361.024(a) of the Texas Solid Waste Disposal Act which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act 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, modifications, renewals, transfers, corrections, revocations and suspensions of permits.

§305.62. Amendment.

- (a) Causes for amendment. Except as provided in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), and in §305.66 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 the permittee requests a modification of a solid waste permit, the application shall be processed in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). 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

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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 of injection, except a minor amendment to an TPDES permit which is defined in subparagraph C of this subsection. 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; and
 - (C) for TPDES permits, only the following changes constitute minor amendments:
 - (i) correct typographical errors;
 - (ii) require more frequent monitoring or reporting by the permittee;
 - (iii) change 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 requirement;
 - (iv) change a new source construction schedule or delete a point source outfall as follows:

- (I) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under 40 CFR §122.19;
- (II) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits'
- (v) when the permit becomes final and effective on or after March 9, 1982, conform to changes respecting to 40 CFR §§ 122.41(e), 122.41(l), 122.41(m)(4)(i)(B) and 122.42(a) issued September 26, 1984; or
- (vi) incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution) as enforceable conditions of the POTW's permit.
- (d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order an amendment to a permit and the executive director may request an updated application if necessary. 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 statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;
 - (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 underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed.
 - (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. Any permittee 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.

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- (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 or modification 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.
- (7) The executive director may grant permission for permittees of non-POTWs (publicly owned treatment works) to submit the information required by 40 Code of Federal Regulations (CFR) §122.21(g)(10) after the permit expiration date.

§305.64. Transfer of Permits.

- (a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the Secretary of State can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.
- (b) Except as provided otherwise in subsection (g), either the transferee or 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:

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- (1) the 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 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);
 - (5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and
 - (6) 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, Tex. Health and Safety Code Ann. Chapter 361 (Vernon) changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control 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 Federal Regulations Part 264, Subpart H requirements within six months of the date of the change of 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 that he no longer needs to comply with 40 Code of Federal Regulations Part 264, Subpart H as of the date of demonstration.
- (h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:
- (1) the permittee no longer owns the permitted facilities; or
 - (2) the permittee is about to abandon or cease operation of the facilities; or
 - (3) the permittee has abandoned or ceased operating the facilities; and
 - (4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.
- (i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:
- (1) the permittee no longer owns or controls the permitted facilities;
 - (2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;
 - (3) the permittee has failed or is failing to comply with the terms and conditions of the permit;
 - (4) the permitted facilities have been or are about to be abandoned;
 - (5) the permittee has violated commission rules or orders;
 - (6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;
 - (7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

- (8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state and/or would minimize the damage to the environment; and
- (9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.
- (j) The commission may initiate proceedings in accordance with Chapter 13 of the Texas Water Code for the appointment of a receiver consistent with this rule.

§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

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- 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 underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed.
 - (8) for Class III injection wells, failure to achieve satisfactory restoration progress; or
 - (9) 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

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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.

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a) Class 1 modifications of solid waste permits.

(1) Except as provided in paragraph (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in Appendix I of this subchapter under the following conditions:

- (A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);
- (B) the permittee must send notice of the modification request by first-class mail to all person listed in §305.103(b) of this title (relating to Notice by Mail). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and
- (C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I by a superscript 1 may be made only with the prior written approval of the executive director.

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- (3) For a Class 1 permit modification, the permittee may elect to follow the procedures in §305.69(b) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in §305.69(b)(1) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).
- (b) Class 2 modifications of solid waste permits.
 - (1) For Class 2 modifications, which are listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:
 - (A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;
 - (B) identifies the modification as a Class 2 modification;
 - (C) explains why the modification is needed; and
 - (D) provides the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses).
 - (2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the commission evidence of the mailing and publication. The notice must include:
 - (A) Announcement of a 60-day comment period, in accordance with §305.69(b)(5) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), and the name and address of an agency contact to whom comments must be sent;

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- (B) Announcement of the date, time, and place for a public meeting to be held in accordance with §305.69(b)(4) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee);
 - (C) Name and telephone number of the permittee's contact person;
 - (E) name and telephone number of an agency contact person;
 - (F) location where copies of the modification request and any supporting documents can be viewed and copied; and
 - (G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."
- (3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.
 - (4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (b)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.
 - (5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.
 - (6) No later than 90 days after receipt of the modification request, the commission must:
 - (A) approve the modification request, with or without changes, and modify the permit accordingly;
 - (B) deny the request;
 - (C) determine that the modification request must follow the procedures in paragraph (c) of this section for Class 3 modifications for either of the following reasons:
 - (i) there is significant public concern about the proposed modification; or
 - (ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification ; or

- (D) approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days; or
 - (E) notify the permittee that it will decide on the request within the next 30 days.
- (7) If the commission notifies the permittee of a 30-day extension for a decision, the commission must, no later than 120 days after receipt of the modification request:
- (A) approve the modification request, with or without changes, and modify the permit accordingly;
 - (B) deny the request;
 - (C) determine that the modification request must follow the procedures in paragraph (c) of this section for Class 3 modifications for either of the following reasons:
 - (i) there is significant public concern about the proposed modification;
 - (ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or
 - (D) approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days.
- (8) If the commission fails to make one of the decisions specified in paragraph (b)(7) of this section by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of §§335.111-335.127 of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities). If the commission approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraphs (b)(6), (7), or (8) of this section, such action cancels the temporary or automatic authorization.
- (9) In the case of an automatic authorization under paragraph (b)(8) of this section, or a temporary authorization under paragraph (b)(6)(D) or (b)(7)(D) of this section, if the commission has

not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §305.103(b) of this title (relating to Notice by Mail), and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

- (A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and
 - (B) unless the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.
- (10) If the owner/operator fails to notify the public by the date specified in paragraph (b)(9) of this section, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.
- (11) Except as provided in paragraph (b)(13) of this section, if the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendment) or §305.63 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of §§335.111-§335.127 of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).
- (12) In the processing of each Class 2 modification request which is subsequently approved or denied by the commission in accordance with paragraphs (b)(6) or (b)(7) of this section, or each Class 2 modification request for which a temporary authorization is issued in accordance with paragraph (e) of this section or a reclassification

to a Class 3 modification is made in accordance with paragraphs (b)(6)(C) or (b)(7)(C) of this section, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

- (13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.
 - (14) The commission may deny or change the terms of a Class 2 permit modification request under paragraphs (b)(6) through (b)(8) of this section for any of the following reasons:
 - (A) the modification request is incomplete;
 - (B) the requested modification does not comply with the appropriate requirements of §§335.151-335.179 of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) or other applicable requirements; or
 - (C) the conditions of the modification fail to protect human health and the environment.
 - (15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.
- (c) Class 3 modifications of solid waste permits.
- (1) For Class 3 modifications listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:
 - (A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;
 - (B) identifies that the modification is a Class 3 modification;
 - (C) explains why the modification is needed; and
 - (D) provides the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for

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Permit), §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses).

- (2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §305.103 of this title (relating to Notice by Mail) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request. The notice must meet the requirements of §305.100 of this title (relating to Notice of Application) and must also include:
 - (A) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;
 - (B) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with §305.69(c)(4) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee);
 - (C) name and telephone number of the permittee's contact person;
 - (D) name and telephone number of an agency contact person;
 - (E) location where copies of the modification request and any supporting documents can be viewed and copied; and
 - (F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."
- (3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.
- (4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (c)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

- (5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.
 - (6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of §§305.91-305.106 of this title (relating to Actions, Notice, and Hearing). When a permit is modified, only the conditions subject to modification are reopened.
- (d) Other modifications.
- (1) In the case of modifications not explicitly listed in Appendix I of this subchapter, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.
 - (2) The executive director shall make the determination described in paragraph (d)(1) of this section as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria:
 - (A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;
 - (B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:
 - (i) common variations in the types and quantities of the wastes managed under the facility permit;
 - (ii) technological advancements; and

- (iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and
- (C) Class 3 modifications reflect a substantial alteration of the facility or its operations.
- (e) Temporary authorizations.
 - (1) Upon request of the permittee, the commission may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than 180 days.
 - (2) The permittee may request a temporary authorization for:
 - (A) any Class 2 modification meeting the criteria in paragraph (e)(5)(B) of this section; and
 - (B) any Class 3 modification that meets the criteria in paragraph (e)(5)(B)(i) or (e)(5)(B)(ii) of this section, or that meets any of the criteria in paragraphs (e)(5)(B)(iii) through (e)(5)(B)(v) of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.
 - (3) The temporary authorization request must include:
 - (A) a specific description of the activities to be conducted under the temporary authorization;
 - (B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and
 - (C) sufficient information to ensure compliance with 40 CFR Part 264 standards.
 - (4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §305.103 of this title (relating to Notice by Mail). This notification must be made within seven days of submission of the authorization request.
 - (5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:
 - (A) the authorized activities are in compliance with the standards of 40 CFR Part 264; and

- (B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:
 - (i) to facilitate timely implementation of closure or corrective action activities;
 - (ii) to allow treatment or storage in tanks or containers of restricted wastes in accordance with 40 CFR Part 268;
 - (iii) to prevent disruption of ongoing waste management activities;
 - (iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or
 - (v) to facilitate other changes to protect human health and the environment.
- (6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:
 - (A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with paragraph (b)(6)(D) or (b)(7)(D) of this section; or
 - (B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of paragraph (c) of this section are conducted.
- (f) Public notice and Appeals of Permit Modification Decisions.
 - (1) The commission shall notify all persons listed in §305.103(b) of this title (relating to Notice by Mail) within 10 working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within 10 working days after an automatic authorization for a Class 2 modification goes into effect under paragraph (b)(8) or (b)(11) of this section.
 - (2) The commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the Administrative Procedure and Texas

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Register Act, Tex. Rev. Civ. Stat. Ann., article 6252-13(a)(Vernon).

(g) Newly listed or identified wastes.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261 if the permittee:

- (A) was in existence as a hazardous waste facility with respect to the newly listed or characteristic waste on the effective date of the final rule listing or identifying the waste;
- (B) submits a Class 1 modification request on or before the date on which the waste becomes subject to the new requirements;
- (C) is in substantial compliance with the standards of 40 CFR Part 265;
- (D) in the case of Classes 2 and 3 modifications, also submits a complete permit modification request within 180 days after the effective date of the final rule listing or identifying the waste; and
- (E) in the case of land disposal units, certifies that each unit is in compliance with all applicable 40 CFR Part 265 ground-water monitoring and financial responsibility requirements on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous. If the owner or operator fails to certify compliance

with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

(h). Appendix I. The following appendix will be used for the purposes of Subchapter D which relate to solid waste permit modification at the request of the permittee.

Modifications

Class

A. General Permit Provisions

- 1. Administrative and informational changes..... 1
- 2. Correction of typographical errors..... 1

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3.	Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).....	1
4.	Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a.	To provide for more frequent monitoring, reporting, sampling, or maintenance.....	1
b.	Other changes.....	2
5.	Schedule of compliance	
a.	Changes in interim compliance dates, with prior approval of the executive director.....	1 ¹
b.	Extension of final compliance date.....	3
6.	Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director.....	1 ¹
7.	Changes in ownership or operational control of a facility, provided the procedures of §305.65(g) are followed.....	1 ¹
 B. General Standards		
1.	Changes to waste sampling or analysis methods:	
a.	To conform with agency guidance or regulations.....	1
b.	Other changes.....	2
2.	Changes to analytical quality assurance/control plan:	
a.	To conform with agency guidance or regulations.....	1
b.	Other changes.....	2
3.	Changes in procedures for maintaining the operating record.....	1
4.	Changes in frequency or content of inspection schedules.....	2
5.	Changes in the training plan:	
a.	That affect the type or decrease the amount of training given to employees.....	2
b.	Other changes.....	1
6.	Contingency plan:	
a.	Changes in emergency procedures (i.e., spill or release response procedures).....	2
b.	Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.....	1
c.	Removal of equipment from emergency equipment list.....	2

- d. Changes in name, address, or phone
number of coordinators or other persons
or agencies identified in the plan..... 1

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Ground-water Protection

- 1. Changes to wells:
 - a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system..... 2
 - b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well..... 1
- 2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director..... 1¹
- 3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director..... 1¹
- 4. Changes in point of compliance..... 2
- 5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):
 - a. As specified in the groundwater protection standard..... 3
 - b. As specified in the detection monitoring program..... 2
- 6. Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix..... 2
- 7. Compliance monitoring program:
 - a. Addition of compliance monitoring program pursuant to §335.164(8)(D) of this title (relating to Detection Monitoring Program), and §335.165 of this title (relating to Compliance Monitoring Program)..... 3
 - b. Changes to a compliance monitoring program as required by §335.165(11) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix.... 2
- 8. Corrective action program:
 - a. Addition of a corrective action program

	pursuant to §335.165(9)(B) of this title (relating to Compliance Monitoring Program) and §335.166 of this title (relating to Corrective Action Program).....	3
b.	Changes to a corrective action program as required by §335.166(8), unless otherwise specified in this appendix.....	2
D.	Closure	
1.	Changes to the closure plan:	
a.	Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director.....	1 ¹
b.	Changes in the closure schedule or any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director.....	1 ¹
c.	Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director.....	1 ¹
d.	Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director.....	1 ¹
e.	Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.....	2
f.	Extension of the closure period to allow a landfill, surface impoundment or land treat- ment unit to receive non-hazardous wastes after final receipt of hazardous wastes under 40 CFR 264.113(d) and (e).....	2
2.	Creation of a new landfill unit as part of closure.....	3
3.	Addition of the following new units to be used temporarily for closure activities:	
a.	Surface impoundments.....	3
b.	Incinerators.....	3
c.	Waste piles that do not comply with 40 CFR 264.250(c).....	3
d.	Waste piles that comply with 40 CFR 264.250(c).....	2
e.	Tanks or containers (other than specified below).....	2
f.	Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive	

director.....1¹

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan..... 1
2. Extension of post-closure care period..... 2
3. Reduction in the post-closure care period..... 3
4. Changes to the expected year of final closure, where other permit conditions are not changed..... 1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure..... 2

F. Containers

1. Modification or addition of container units:
 - a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 3
 - b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 2
 - c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1¹
2.
 - a. Modification of a container unit without increasing the capacity of the unit..... 2
 - b. Addition of a roof to a container unit without alternation of the containment system..... 1
3. Storage of different wastes in containers, except as provided in F(4) below:
 - a. That require additional or different management practices from those authorized in the permit..... 3
 - b. That do not require additional or different

- management practices from those authorized in the permit..... 2
- Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.
4. Storage or treatment of different wastes in containers:
 - a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8 (a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1¹
 - b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1
 5. Other changes in container management practices (e.g., aisle space, types of containers, segregation)..... 2
- G. Tanks
1. a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below of this appendix..... 3
 - b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below of this appendix..... 2

- c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 2
- d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 1¹
- e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1¹
- 2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit..... 2
- 3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided:..... 1
 - a. The capacity difference is no more than 1500 gallons;
 - b. The facility's permitted tank capacity is not increased; and
 - c. The replacement tank meets the same conditions in the permit.
- 4. Modification of a tank management practice..... 2
- 5. Management of different wastes in tanks:
 - a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different

- tank treatment process from that authorized in the permit, except as provided in G(5)(c) below..... 3
- b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below..... 2
- c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1¹
- d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity... 3
2. Replacement of a surface impoundment unit..... 3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system..... 2
4. Modification of a surface impoundment management

- practice..... 2
5. Treatment, storage, or disposal of different wastes in surface impoundments:
- a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 3
 - b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 2
 - c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1
 - d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

- I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).
- 1. Modification or addition of waste pile units:

- a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity..... 3
 - b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity..... 2
 - 2. Modification of waste pile unit without increasing the capacity of the unit..... 2
 - 3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit..... 1
 - 4. Modification of a waste pile management practice.... 2
 - 5. Storage or treatment of different wastes in waste piles:
 - a. That require additional or different management practices or different design of the unit..... 3
 - b. That do not require additional or different management practices or different design of the unit..... 2
- Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

J. Landfills and Unenclosed Waste Piles

- 1. Modification or addition of landfill units that result in increasing the facility's disposal capacity..... 3
- 2. Replacement of a landfill..... 3
- 3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 3
- 4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 2
- 5. Modification of a landfill management practice..... 2
- 6. Landfill different wastes:
 - a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 3
 - b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 2
 - c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are

treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

- d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent..... 3
2. Modification of run-on control system..... 2
3. Modify run-off control system..... 3
4. Other modifications of land treatment unit component specifications or standards required in the permit..... 2
5. Management of different wastes in land treatment units:

- a. That require a change in permit operating conditions or unit design specifications..... 3
- b. That do not require a change in permit operating conditions or unit design specifications..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment management practice to:
 - a. Increase rate or change method of waste application..... 3
 - b. Decrease rate of waste application..... 1

7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions..... 2
8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops..... 3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2)..... 3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements..... 3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements..... 2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid..... 2
13. Changes in sampling, analysis, or statistical procedure..... 2
14. Changes in land treatment demonstration program prior to or during the demonstration..... 2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received..... 1¹
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director..... 1¹
17. Changes to allow a second land treatment demonstration to be conducted when the

- results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration..... 3
18. Changes in vegetative cover requirements for closure..... 2
- L. Incinerators
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a waste feed rate limit; or an organic chlorine feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3
 2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a waste feed rate limit; or an organic chlorine feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 2
 3. Modification of an incinerator unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl or particulate from the combustion gases, or by changing other features of the incinerator that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3
 4. Modification of an incinerator unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards..... 2
 5. Operating requirements:

- a. Modification of the limits specified in the permit for minimum combustion gas temperature, minimum combustion gas residence time, or oxygen concentration in the secondary combustion chamber. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3
- b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls..... 3
- c. Modification of any other operating condition or any inspection or record-keeping requirement specified in the permit.... 2
- 6. Incineration of different wastes:
 - a. If the waste contains a POHC that is more difficult to incinerate than authorized by the permit or if incineration of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3
 - b. If the waste does not contain a POHC that is more difficult to incinerate than authorized by the permit and if incineration of the waste does not require compliance with different regulatory performance standards than specified in the permit..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

- 7. Shakedown and trial burn:
 - a. Modification of the trial burn or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn..... 2
 - b. Authorization of up to an additional 720 hours of waste incineration during

- the shakedown period for determining operational readiness after construction, with the prior approval of the executive director..... 1¹
- c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director..... 1¹
- d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director..... 1¹
8. Substitution of an alternate type of fuel that is not specified in the permit..... 1

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Subchapter E
Actions, Notice and Hearing
§§305.92-305.93, 305.96,
305.98-305.99, 305.102-305.106

These sections are promulgated under Texas Water Code, §§5.103 and 5.105, and §§361.017 and 361.024(a) of the Texas Solid Waste Disposal Act which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act 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.

§305.91. 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, Class 3 modification, 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 60 days for Class 3 modifications of hazardous and solid waste permits and shall be 45 days for other applications involving hazardous waste under the Texas Solid Waste Disposal Act, Tex. Health and Safety Code Ann. Chapter 361 (Vernon).

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- (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 or Modification

- (a) Except as provided in subsection d of this section, the commission may take action on an application for a major amendment or a Class 3 solid waste permit modification 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 a minor amendment, except an application for a TPDES 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.

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- (c) The commission may take action on a request for Class 2 solid waste permit modification at a regular meeting of the commission without holding an evidentiary hearing, provided the notice procedures of §305.103 have been completed.
- (d) The commission shall conduct an evidentiary hearing on a petition for a major amendment, or a request for a Class 3 solid waste permit modification 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, or modification 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, or modified 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 or modify 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, Tex. Health and Safety Code Ann. Chapter 361 (Vernon), 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, Tex. Health and Safety Code Ann. Chapter 361, §361.082(e) 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:

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- (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) A notice of application shall fairly set forth the substance of the application and proposed action, including but not limited to 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.
- (b) For requests for a discharge with a thermal component filed pursuant to Clean Water Act §316(a), 40 Code of Federal Regulations (CFR) Part 124, Subpart D, §124.57(a), Public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference.
- (c) A copy of 40 CFR Part 124 is available for inspection at the library of the Texas Water Commission, located on the fifth floor of the Stephen F. Austin State Office Building, 1700 North Congress, Austin.

§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. For Texas pollutant discharge elimination system (TPDES) permits in

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addition to the general information described in this section, the public notice of hearing shall include the information described in 40 Code of Federal Regulations §§124.10(d)(1)(i)-(v) and (vii).

§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, except as provided by §305.69(b)(2) and §305.69(c)(2) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) 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. Except as provided by §305.69(b)(2) and §305.69(c)(2) of this title (relating Solid Waste Permit Modification at the Request of the Permittee), 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 Health and Safety Code Ann. Chapter 361 (Vernon), except for modifications under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), 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

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commission may cause the notice to be broadcast and the applicant shall reimburse the commission for the cost of the broadcast within 30 days of each broadcast.

§305.105. Request for Public Hearing.

- (a) A request for public hearing under this chapter must be made in writing and submitted by an affected person to the commission within 30 days after the first publication of the notice of application, except that a request must be submitted within 45 days after the first publication of the notice of an application involving hazardous waste or 60 days after the first publication of the notice of a Class 3 modification of a solid waste permit under the Texas Solid Waste Disposal Act. The commission may extend the time allowed for submitting a request for public hearing.
- (b) The written request shall contain the following information:
 - (1) the name, mailing address, and phone number of the person making the request;
 - (2) a brief description of the interest of the person making the request, or of persons represented by the person making the request; and,
 - (3) a brief description of how the application, if granted, would adversely affect such interest.
- (c) An affected person is one who is determined by the commission to have an interest that may be adversely affected by action taken on the application.
- (d) If the commission determines the request for public hearing is in compliance with this section, or that a public hearing would serve the public interest, the commission shall conduct a public hearing.

§305.106. Response to Comments. This section is adopted for the purposes of conforming commission procedures to 40 Code of Federal Regulations §124.17. The commission, through the executive director or the office of hearings examiners, shall prepare and make available to the public a brief description and response to all significant comments on the draft permit which are filed with the commission during the 30 or 45-day comment period, as applicable, in accordance with the provisions of 305.93 of this title (relating to Action on Application for Permit), or which are made during the 60-day comment period in accordance with the provisions of §305.69(c) of this title (relating to Class 3 Modifications of Solid Waste Permits or which are made during the public comment session of a hearing held pursuant to 305.105 of this title (relating to Request for Public Hearing) and the Texas Administrative Procedure and Texas Register Act, Tex. Rev. Civ.

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Stat. Ann. Article 6252-13a (Vernon). The response to comments shall include a specification of which provisions of the draft permit, if any, have been changed in response to comments and the reasons for the change. If a hearing is held and a hearings examiner's proposal for decision is issued, the response to comments may be incorporated into the proposal for decision.

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Subchapter F
Permit Characteristics and Conditions.
§305.127

These sections are promulgated under the Texas Water Code, §§5.103 and 5.105, and §§361.017 and 361.024(a) of the Texas Solid Waste Disposal Act which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act 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 discharge, and solid waste management, including sewage sludge.

§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.
- (c) Except for any toxic effluent standards and prohibitions imposed under Clean Water Act (CWA), §307, and standards for sewage sludge use or disposal under CWA, §405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§301, 302, 306, 307, 318, 403, and 405; however, a TPDES permit may be amended or revoked during its term for cause as set forth in §§305.62 and 305.66 of this title (relating to Amendment; and Action and Notice on Petition for Revocation or Suspension).

§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, the 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 for Texas pollutant discharge elimination system (TPDES) permits the Clean Water Act, and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application 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 prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting 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) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.
 - (A) 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 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.
 - (B) The following shall be included as information which must be reported within 24 hours under this paragraph.
 - (i) any unanticipated bypass which exceeds any effluent limitation in a TPDES permit.
 - (ii) violation of a maximum daily discharge limitation for any of the pollutants listed in a TPDES permit to be reported within 24 hours.
- (10) Inspection and entry shall be allowed as prescribed in the Texas Water Code, Chapters 26-28, the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §7, and 40 Code of Federal Regulations (CFR) §122.41(i). The statement in Texas Water Code §26.014 that commission entry of a

facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

- (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) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §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, application, 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

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(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.
- (20) The permittee is subject to administrative, civil, and criminal penalties, as applicable, pursuant to Texas Water Code §§26.136, 26.212, and 26.213 for violations including but not limited to the following:
 - (A) negligently or knowingly violating CWA, §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, §402, or any requirement imposed in a pretreatment program approved under CWA, §§402(a)(3) or 402(b)(8);
 - (B) falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to maintained under a permit; or
 - (C) knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including

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monitoring reports or reports of compliance or noncompliance.

§305.126. Additional Standard Permit Conditions for Waste Discharge Permits.

- (a) Whenever flow measurements for any sewage treatment plant facility in the state reaches 75% 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 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 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.
- (b) Within one year of issuance of any new, amended, or renewal permit, permittees of domestic wastewater treatment facilities with a permitted daily average effluent flow equal to or greater than 500,000 gallons per day shall submit to the executive director a study that investigates the possibility of substituting reclaimed water for potable water and/or freshwater where such substitution would be both appropriate and cost effective. Reclaimed water is domestic wastewater that is under the direct control of the treatment plant owner/operator which has been treated to a quality suitable for a beneficial use. At a minimum, the study shall include:
 - (1) a water supply and demand assessment for the area served;

- (2) an inventory of potential areas where reclaimed water may be appropriately substituted for potable water and/or freshwater;
 - (3) an inventory of potential uses of reclaimed water;
 - (4) an analysis of the market for reclaimed water and the conditions necessary to serve that market (eg. quantity, quality, selling price, distribution system); and
 - (5) a preliminary cost-benefit analysis for the treatment and use of reclaimed water compared with the continued use of potable water and/or freshwater, water supply augmentation, water conservation, and/or cost of treatment and disposal of treated wastewater.
- (c) Any permittee required to perform a study pursuant to subsection (b) of this section may be granted an extension of the one year deadline if in the judgment of the executive director good cause exists.
- (d) The permittee shall give notice to the executive director as soon as possible of any planned physical alterations or additions to the permitted facility. In addition to the requirements of §305.125(7) of this title (relating to Standard Permit Conditions), notice shall also be required under this subsection when:
- (1) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in §305.534 of this title (relating to New Sources and New Dischargers); or
 - (2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 Code of Federal Regulations (CFR) 122.42(a)(1) as adopted by §305.531(a) of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);
 - (3) the alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

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- (e) If the permittee is a new discharger, it must provide quantitative data described in 40 CFR §§122.21(h)(4)(i) and (ii) no later than two years after commencement of discharge; however, the permittee need not conduct tests which the permittee has already performed and reported under the discharge monitoring requirements of its TPDES permit.

§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) Texas pollutant discharge elimination system (TPDES) permits, including sludge permits, shall be effective for a term not to exceed five years.
 - (ii) All other permits shall be effective as follows:
 - (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 land disposal systems, shall be effective for a term not to exceed 10 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. For TPDES permits the schedule of compliance shall require compliance not later than the applicable statutory deadline under the Clean Water Act.

- (B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.
- (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.
- (D) For TPDES permits the following additional conditions for schedules of compliance apply:
 - (i) The first TPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge.
 - (ii) For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.
 - (iii) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the permit schedule shall set forth interim requirements and the dates for their achievement.
- (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 applicable statutory or regulatory requirements which take effect prior to final administrative disposition of an application for a permit or prior to the amendment, modification or suspension and reissuance of a permit shall be included in the permit.
 - (C) New, amended, modified, 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 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);
 - (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) Any person signing a report required by a permit shall make the certification set forth in §305.44(b) of this title (relating to Signatories to Applications).

§305.129. Variance Procedures. The following regulations contained in 40 Code of Federal Regulations, which are in effect as of the date of Texas pollutant discharge elimination system TPDES program authorization, as amended, are adopted by reference:

- (1) Part 122, Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(m), providing requirements for variance requests by non-publicly owned treatment works.
- (2) Part 122, Subpart B -- Permit Applications and Special NPDES Program Requirements, §122.21(n), providing requirements for variance requests by POTWs.
- (3) Part 122, Subpart C -- Permit Applications and Special NPDES Program Requirements, §122.21(o), providing requirements for expedited variance procedures and time extensions.

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- (4) Part 124, Subpart D -- Specific Procedures Applicable to NPDES Permits, §124.62, providing decision-making procedures for variances.

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Subchapter G
Additional Conditions for Solid Waste Storage,
Processing or Disposal Permits
§305.144

These sections are promulgated under the Texas Water Code, §§5.103 and 5.105, and §§361.017 and 361.024(a) of the Texas Solid Waste Disposal Act which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act 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 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, except as provided in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) 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:

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- (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

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- (4) title (relating to Annual Reporting); an annual report must be submitted covering facility activities during the previous calendar year; 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 G
Additional Conditions for Solid Waste Storage,
Processing or Disposal Permits
§305.144

These sections are promulgated under the Texas Water Code, §§5.103 and 5.105, and §§361.017 and 361.024(a) of the Texas Solid Waste Disposal Act which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act 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

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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 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, except as provided in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) 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:

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- (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

- (4) title (relating to Annual Reporting); an annual report must be submitted covering facility activities during the previous calendar year; 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.)

§§305.171-305.174

Subchapter I
Hazardous Waste Incinerator Permits
§§305.171-305.172, 305.174

These sections are promulgated under the Texas Water Code, §§5.103 and 5.105, and §§361.017 and 361.024(a) of the Texas Solid Waste Disposal Act which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act 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 modified to reflect the extension pursuant to §305.69 (relating to Solid Waste Permit Modification at the Request of the Permittee)

- (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 or modification shall proceed according to §305.62 of this title (relating to Amendment or §305.69(c) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

§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.

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§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 (CFR) §264.345, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with 40 CFR §270.19(b) and §§305.172(2)-(9) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) or, instead, submit other information as specified in 40 CFR §270.19(c). Applicants submitting information specified in 40 CFR §270.19(a) are exempt from compliance with 40 CFR §§264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. 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. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the executive director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

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

These sections are promulgated under the Texas Water Code, §§5.103 and 5.105, and §§361.017 and 361.024(a) of the Texas Solid Waste Disposal Act which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act 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 §035.44 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 or Modification. 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 under §305.62 of this title (relating to Amendment) or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), provided any such change is minor, or otherwise will proceed as an amendment under §305.62(d) of this title (relating to Amendment). If such modifications or amendments are necessary, the second phase of the permit will become effective only after those modifications or amendments have been made.

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- (2) If not amendments of the second phase of the permit are necessary, the commission shall give notice in accordance with §305.96(b) of this title (relating to Action On Application For Amendment or Modification). 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.

§§305.531-305.538

Subchapter O
Additional Conditions and Procedures for
Wastewater Discharge Permits and Sewage Sludge Permits
§§305.531-305.538

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.

§305.531. Establishing and Calculating Additional Conditions and Limitations for TPDES Permits. The following regulations contained in 40 Code of Federal Regulations Part 122, Subpart C, Permit Conditions, and Part 124, Subpart C, Specific Procedures Applicable to Texas pollutant discharge elimination system (TPDES) permits, which are in effect as of the date TPDES program authorization, as amended, are adopted by reference:

- (1) §122.42 -- Additional conditions applicable to specified categories of NPDES permits. Section 122.42 provides additional conditions for existing manufacturing, commercial, mining, and silvicultural dischargers, and for publicly owned treatment works (POTWs).
- (2) §122.43(a) and (b) -- Establishing permit conditions. Section 122.43 relates to conditions assuring compliance with all applicable requirements of the CWA and regulations.
- (3) §122.44 -- Establishing limitations, standards, and other permit conditions applicable to state NPDES programs. Section 122.44 relates to technology-based effluent limitations and standards, other effluent limitations and standards, reopener clauses, water quality standards and State requirements, toxic pollutants, notification levels, twenty-four hour reporting, durations for permits, monitoring requirements, pretreatment programs for POTWs, best management practices, reissued permits, privately owned treatment works, grants, sewage sludge, Coast Guard, and navigation.
- (4) §122.45 -- Calculating NPDES permit conditions. Section 122.45 relates to outfalls and discharge points, production-based limitations, metals, continuous discharges, noncontinuous discharges, mass limitations, pollutants in intake water, internal waste streams, and disposal of pollutants into wells, into POTWs, or by land application.
- (5) §122.50 -- Disposal of pollutants into wells, into POTWs, or by land application.

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- (6) §124.59 -- Conditions requested by the Corps of Engineers and other government agencies.

§305.532. Adoption of Appendices by Reference. The following appendices contained in 40 Code of Federal Regulations Part 122, which are in effect as of the date of Texas pollutant discharge elimination system (TPDES) program authorization, as amended, are adopted by reference and apply only to TPDES permits:

- (1) Appendix A - NPDES Primary Industry Categories.
- (2) Appendix B - Criteria for Determining a Concentrated Animal Feeding Operation.
- (3) Appendix C - Criteria for Determining a Concentrated Aquatic Animal Production Facility.
- (4) Appendix D - NPDES Permit Application Testing Requirements.

§305.533. Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs. On the date the Environmental Protection Agency (EPA) approves the Texas pollutant discharge elimination system (TPDES) permit program, and issuance of national pollutant discharge elimination system (NPDES) permits is delegated from the EPA to the state, the state adopts all EPA permits and pretreatment programs. This provision does not affect the right of the EPA to issue NPDES permits for classified major facilities which expired in fiscal year 1990 or to modify NPDES permits under Clean Water Act, §304(1). If the requirements of a state permit and an EPA permit issued to the same permittee or for the same facility are not of equal stringency, the more stringent requirements shall apply.

§305.534. New Sources and New Dischargers.

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Existing source - any source which is not a new source or a new discharger.
 - (2) Facilities or equipment - for the purposes of this section, buildings structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. These terms exclude facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

- (3) New source, new discharger, and site are defined in §305.2 of this title (relating to Definitions).
- (4) Source - any building, structure, facility, or installation from which there is or may be a discharge of pollutants.
- (b) Criteria for new source determination.
 - (1) Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in §305.2 of this title (relating to Definitions) and:
 - (A) it is constructed at a site at which no other source is located; or
 - (B) it totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (C) its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the director shall consider such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.
 - (2) A source meeting the requirements of paragraph (1) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.
 - (3) Construction on a site at which an existing source is located results in an amendment subject to §305.62 of this title (relating to Amendments) rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (1)(B) or (C) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.
 - (4) Construction of a new source as defined under §305.2 of this title (relating to Definitions) has commenced if the owner or operator has:
 - (A) begun, or caused to begin as part of a continuous on-site construction program:
 - (i) any placement, assembly, or installation of facilities or equipment; or
 - (ii) significant site preparation work including clearing, excavation or removal

- of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- (B) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under this paragraph.
- (c) Effect of compliance with new source performance standards. (The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.)
 - (1) Except as provided in paragraph (2) of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under, Clean Water Act (CWA) §301(b)(2), for the soonest ending of the following periods:
 - (A) 10 years from the date that construction is completed;
 - (B) 10 years from the date the source begins to discharge process or other nonconstruction related wastewater; or
 - (C) the period of depreciation or amortization of the facility for the purposes of the Internal Revenue Code of 1954, §167 or §169 (or both).
 - (2) The protection from more stringent standards of performance afforded by paragraph (1) of this subsection does not apply to:
 - (A) additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under CWA, §307(a); or
 - (B) additional permit conditions in accordance with 40 Code of Federal Regulation (CFR)

§125.3, adopted by §308.1 of this title (relating to Criteria and Standard for Imposing Technology-Based Treatment Requirements) controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

- (3) When a TPDES permit issued to a source with a protection period under paragraph (1) of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of CWA, §301, and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.
- (4) The owner or operator of a new source, a new discharger which commenced after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 40 CFR §122.47(a)(2).
- (5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

§305.535. Bypasses from TPDES Permitted Facilities.

- (a) Authorized bypass. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential

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maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (b) and (c) of this section.

(b) Notice.

- (1) Anticipated bypass. In accordance with the procedures described in §§305.21 and 305.23 of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) if the permittee knows in advance of the need for a bypass, it shall submit prior notice.
- (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in §305.125(9) of this title (relating to Standards Permit Conditions) (24-hour notice).

(c) Prohibition of Bypass.

- (1) bypass is prohibited, and the commission may take enforcement action against the permittee for bypass, unless:
 - (A) bypass was unavoidable to prevent loss of life, personal injury, severe property damage, severe economic loss (except economic loss due to delays in production), or to make necessary and unforeseen repairs to a facility;
 - (B) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) the permittee submitted notices as required under subsection (b) of this section.
- (2) The commission may approve an anticipated bypass in accordance with the procedures described in §§305.21 and 305.23 after considering its adverse effects, if the executive director determines that it will meet the three conditions listed in paragraph (1) of this subsection.

§305.536. Requirements for Applications and Permits with Sludge Related Conditions.

- (a) Sludge standards. The permittee shall comply with standards for sewage sludge use or disposal established under the Clean Water Act, §405(d) (40 Code of Federal Regulations, Part 503) within the time provided in the

regulations that established such standards, even if the permit has not yet been modified to incorporate standards.

- (b) Additional Contents of Applications. In addition to all other requirements for information described in §305.48 of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits), all treatment works treating domestic sewage shall submit to the executive director within the time frames established in subsection (c) of this section the information described in 40 CFR §§501.15(a)(2)(viii)-(xii), as amended.
- (c) Time Frames for Applications.
 - (1) Any POTW with a currently effective TPDES permit shall submit the application information required by subsection (b) of this section when its next application for TPDES permit renewal is due or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to POTWs' sludge use or disposal practices, whichever occurs first.
 - (2) Any other existing treatment works treating domestic sewage not covered under subsection (c)(1) of this section shall submit an application to the executive director within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practices or upon request of the executive director prior to the promulgation of an applicable standard for sewage sludge use or disposal if the executive director determines that a permit is necessary to protect public health and the environment from any adverse effect that may occur from toxic pollutants in sewage sludge.
 - (3) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the executive director at least 180 days prior to the date proposed for commencing operations.
- (d) Fact Sheets. A fact sheet shall be prepared for every draft permit described in 40 CFR §501.15(d)(4), as amended. The executive director shall send this fact sheet to the applicant and, on request, to any other person. The fact sheet shall include the information required by 40 CFR §501.15(d)(4), as amended.

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§305.537. Reporting Requirements for Planned Physical Changes to a Permitted Facility. Except to the extent that it is less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations §122.41(1)(1), which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference.

§305.538. Prohibitions for TPDES Permits. No permit may be issued under the conditions prohibited in 40 Code of Federal Regulations §122.4, as amended.

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These section is 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.

§305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits. Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations Subchapter N, Parts 400-471, except 40 Code of Federal Regulations Part 403, which are in effect as of the date of TPDES program authorization, as amended, are adopted by reference.