

US EPA ARCHIVE DOCUMENT

Statutes
Memorandum
VI
SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS,
SEWAGE, LITTER, AND WATER

CHAPTER 361. SOLID WASTE DISPOSAL ACT

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 361.001. Short Title.
- 361.002. Policy; Findings.
- 361.003. Definitions.

[Sections 361.004 to 361.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS DEPARTMENT OF HEALTH
AND TEXAS WATER COMMISSION

- 361.011. Department's Jurisdiction: Municipal Solid Waste.
- 361.012. Department's Jurisdiction: Municipal Solid Waste and Industrial Solid Waste.
- 361.013. Solid Waste Disposal and Transportation Fees.
- 361.014. Use of Solid Waste Fee Revenue.
- 361.015. Department's Jurisdiction: Radioactive Waste.
- 361.0151. Recycling.
- 361.016. Memorandum of Understanding by Board of Health.
- 361.017. Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste.
- 361.018. Commission's Jurisdiction Over Hazardous Waste Components of Radioactive Waste.
- 361.019. Approval of Industrial Solid Waste Management in Municipal Solid Waste Facility.
- 361.020. State Solid Waste Plans.
- 361.021. Interagency Coordination Council.
- 361.0211. Pollution Prevention Council.
- 361.0215. Waste Reduction Advisory Committee.
- 361.0216. Office of Pollution Prevention.
- 361.022. Public Policy Concerning Municipal Solid Waste and Sludge.
- 361.023. Public Policy Concerning Hazardous Waste.
- 361.0231. Public Policy Concerning Adequate Capacity for Industrial and Hazardous Waste.
- 361.0232. Assessment of Commercial Hazardous Waste Management Capacity.
- 361.0232. Hazardous Waste Generated in Foreign Country.
- 361.0233. Assessment of Commercial Nonhazardous Solid Waste Disposal Capacity.
- 361.0234. Rules; Update of Rules and Assessments.
- 361.024. Rules and Standards.
- 361.025. Exempt Activities.
- 361.026. Assistance Provided by Department and Commission.
- 361.027. Training of Solid Waste Technicians.
- 361.028. Industrial Solid and Hazardous Waste Materials Exchange.
- 361.029. Collection and Disposal of Household Materials That could be Classified as Hazardous Waste.
- 361.030. Federal Funds.
- 361.031. Financial Assistance to Local Governments.

Section

- 361.032. Inspections; Right of Entry.
- 361.033. Inspections Required by Environmental Protection Agency.
- 361.034. Reports.
- 361.035. Records and Reports; Disposal of Hazardous Waste.
- 361.036. Records and Manifests Required; Class I Industrial Solid Waste or Hazardous Waste.
- 361.037. Access to Hazardous Waste Records.
- 361.038. Annual Inspection Report.
- 361.039. Construction of Other Laws.

[Sections 361.040 to 361.060 reserved for expansion]

SUBCHAPTER C. PERMITS

- 361.061. Permits; Solid Waste Facility.
- 361.062. Compatibility with County's Plan.
- 361.063. Preapplication Local Review Committee Process.
- 361.0635. Preapplication Meeting.
- 361.064. Permit Application Form and Procedures.
- 361.0641. Notice to State Senator and Representative.
- 361.065. Repealed.
- 361.066. Submission of Administratively Complete Permit Application.
- 361.0665. Notice of Intent to Obtain Municipal Solid Waste Permit.
- 361.067. Review of Permit Application by Other Governmental Entities.
- 361.068. When Application is Administratively Complete.
- 361.069. Determination of Land Use Compatibility.
- 361.070. Sole Permit Hearing.
- 361.071. Permit From Other Agencies.
- 361.072. Joint Rules or Memoranda of Agreement With Department or Commission.
- 361.073. Air Control Board Review of Permit Application.
- 361.074. Certain Permit Applications Not Affected.
- 361.075. Delegation of Air Control Board Authority.
- 361.076. Other State Agencies' Review of Permit Application.
- 361.077. Exemption of Certain Facilities That Burn Hazardous Waste.
- 361.078. Maintenance of State Program Authorization Under Federal Law.
- 361.079. Notice Concerning Receipt of Permit Application; Hearing Procedures.
- 361.0791. Public Meeting and Notice Requirement.
- 361.080. Hearing Concerning Permit Application for Hazardous Industrial Solid Waste Facility.
- 361.081. Notice of Hearing Concerning Application for a Solid Waste Facility.
- 361.082. Application for Hazardous Waste Permit; Notice and Hearing.
- 361.083. Evidence of Notice of Hearing.
- 361.0831. Ex Parte Contacts Prohibited.
- 361.0832. Proposal for Decision; Certified Issues; Reversal by Commission.
- 361.0833. Costs for Information Provided by a Person Affected Regarding Hazardous Waste Permit.
- 361.084. Compliance Summaries.
- 361.085. Financial Assurance and Disclosure by Permit Applicant.
- 361.086. Separate Permit for Each Facility.
- 361.0861. Separate Recycling Permit not Required.
- 361.087. Contents of Permit.
- 361.0871. Evaluation of Waste Stream; Land Use and Need.
- 361.088. Permit Issuance, Amendment, Extension and Renewal; Notice and Hearing.
- 361.0885. Denial of application; Involvement of Former Employee.

SANITATION AND ENVIRONMENTAL QUALITY
Ch. 361

Section

- 361.089. Permit Denial, Amendment, Suspension or Revocation; Notice and Hearing.
- 361.090. Regulation and Permitting of Certain Industrial Solid Waste Disposal.
- 361.091. Enclosed Containers or Vehicles; Permits; Inspections; Criminal Penalty.
- 361.092. Permit for Extracting Materials from Certain Solid Waste Facilities.
- 361.093. Regulation and Permitting of Rendering Plants.
- 361.094. Permit Holder Exempt From Local License Requirements.
- 361.095. Applicant for Hazardous Waste Management Facility Permit Exempt From Local Permit.
- 361.096. Effect on Authority of Local Government or Other Political Subdivision.
- 361.097. Condition on Issuance of Permit for Hazardous Waste Management Facility.
- 361.098. Prohibition on Permit for Hazardous Waste Landfill in 100-Year Floodplain.
- 361.099. Prohibition on Permit for Hazardous Waste Management Unit in Wetlands.
- 361.100. Prohibition on Permit for Certain Hazardous Waste Management Units.
- 361.101. Prohibition on Permit for Facility on Recharge Zone of Sole Source Aquifer.
- 361.1011. Prohibition on Permit for Facility Affected by Fault.
- 361.102. Prohibition on Permit for Hazardous Waste Management Facilities Within a Certain Distance of Residence, Church, School, Day Care Center, Park, or Public Drinking Water Supply.
- 361.103. Other Areas Unsuitable for Hazardous Waste Management Facility.
- 361.104. Prohibition on Permit for Facility in Unsuitable Area.
- 361.105. Petition by Local Government for Rule on Hazardous Waste Facility in Unsuitable Area.
- 361.106. Prohibition on Permit for Landfill if Alternative Exists.
- 361.107. Hydrogeologic Report for Certain Hazardous Waste Facilities.
- 361.108. Engineering Report for Hazardous Waste Landfill.
- 361.109. Grant of Permit for Hazardous Waste Management Facility.
- 361.110. Termination of Authorization or Permit.
- 361.111. Department May Exempt Certain Municipal Facilities.
- 361.112. Storage, Transportation, and Disposal of Used or Scrap Tires.
- 361.113. Permit Conditions for the Operation of Hazardous Waste Management Facilities.
- 361.114. Grant of Permit for Disposal of Hazardous Waste Into Salt Domes.

[Sections 361.115 to 361.130 reserved for expansion]

**SUBCHAPTER D. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE
GENERATION, FACILITY, AND MANAGEMENT: FEES AND FUNDS**

- 361.131. Definitions.
- 361.132. Hazardous and Solid Waste Fees Fund.
- 361.133. Hazardous and Solid Waste Remediation Fee Fund.
- 361.134. Industrial Solid Waste And Hazardous Waste Generation Fee.
- 361.135. Industrial Solid Waste and Hazardous Waste Facility Fee.
- 361.136. Hazardous Waste Management Fee.
- 361.137. Permit Application Fee.
- 361.138. Fee on the Sale of Batteries.
- 361.139. Factors to be Considered in Setting Fees.
- 361.140. Interest and Penalties.

[Sections 361.141 to 361.150 reserved for expansion]

Section

SUBCHAPTER E. POWERS AND DUTIES OF LOCAL GOVERNMENTS

- 361.151. Relationship of County Authority to State Authority.
- 361.152. Limitation on County Powers Concerning Industrial Solid Waste.
- 361.153. County Solid Waste Plans and Programs; Fees.
- 361.154. County Licensing Authority.
- 361.155. County Notification of License Application to State Agencies.
- 361.156. Separate License for Each Facility.
- 361.157. Contents of License.
- 361.158. License Fee.
- 361.159. License Issuance; Amendment, Extension, and Renewal.
- 361.160. License Amendment and Revocation.
- 361.161. Permit From Department or Commission Not Required.
- 361.162. Designation of Areas Suitable for Facilities.
- 361.163. Cooperative Agreements With Local Governments.
- 361.164. Enforcement.
- 361.165. Political Subdivisions With Jurisdiction in Two or More Counties.
- 361.166. Municipal Restrictions.
- 361.167. Operation of Facility by Political Subdivision.

[Sections 361.168 to 361.180 reserved for expansion]

SUBCHAPTER F. REGISTRY AND CLEANUP OF CERTAIN
HAZARDOUS WASTE FACILITIES

- 361.181. State Registry: Annual Publication.
- 361.182. Investigations.
- 361.183. Registry Listing Procedure: Determination of Eligibility.
- 361.184. Registry Listing Procedure: Notices and Hearing.
- 361.185. Investigation/Feasibility Study.
- 361.186. Facility Eligible for Listing: Activities and Change of Use.
- 361.187. Proposed Remedial Action.
- 361.188. Final Administrative Order.
- 361.189. Deletions from Registry.
- 361.190. Change in Use of Listed Facility.
- 361.191. Immediate Removal.
- 361.192. Remedial Action by Commission.
- 361.193. Goal of Remedial Action.
- 361.194. Lien.
- 361.195. Payments from Hazardous Waste Disposal Fee Fund.
- 361.196. Remediation: Permits not Required; Liability.
- 361.197. Cost Recovery.
- 361.198. Administrative or Civil Penalty.
- 361.199. Mixed Funding Program.
- 361.200. De Minimis Settlement.
- 361.201. Financial Capability and Funding Priority.
- 361.202. Deadline Extensions.

[Sections 361.203 to 361.220 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT; CRIMINAL AND CIVIL PENALTIES

- 361.221. Offenses and Criminal Penalties.

SANITATION AND ENVIRONMENTAL QUALITY

Ch. 361

Section

- 361.2215. Criminal Offenses and Penalties.
- 361.222. Endangerment Offenses.
- 361.2225. Failure to Pay Fees; Criminal Penalties.
- 361.2226. Affirmative Defense.
- 361.223. Civil Penalties.
- 361.224. Suit by State.
- 361.225. Suit by County or Political Subdivision.
- 361.226. Suit by Municipality.
- 361.227. Venue.
- 361.228. Injunction.
- 361.229. Parties in Suit by Local Government.
- 361.230. Fees and Costs Recoverable.
- 361.231. Notice of Criminal Conviction.
- 361.232. Criminal Fine Treated as Judgment in Civil Action.
- 361.233. Effect on Certain Other Laws.
- 361.234. Defense Excluded.
- 361.235. Testimonial Immunity.

[Sections 361.236 to 361.250 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT; ADMINISTRATIVE PENALTIES

- 361.251. Administrative Penalty by Department.
- 361.252. Administrative Penalty by Commission.

[Sections 361.253 to 361.270 reserved for expansion]

SUBCHAPTER I. ENFORCEMENT; ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT

- 361.271. Persons Responsible for Solid Waste.
- 361.272. Administrative Orders Concerning Imminent and Substantial Endangerment.
- 361.273. Injunction as Alternative to Administrative Order.
- 361.274. No Prior Notice Concerning Administrative Order.
- 361.275. Defenses.
- 361.276. Apportionment of Liability.
- 361.277. Judgment by State Against Nonsettling Party; Action for Contribution by Nonsettling Party.
- 361.278. Liability of Engineer or Contractor.
- 361.279. Contracts With State.
- 361.280. Remedies Cumulative.

[Sections 361.281 to 361.300 reserved for expansion]

SUBCHAPTER J. ENFORCEMENT; EMERGENCY ORDER; CORRECTIVE ACTION

- 361.301. Emergency Order.
- 361.302. Issuance of Order by Commission.
- 361.303. Corrective Action.

[Sections 361.304 to 361.320 reserved for expansion]

Section

SUBCHAPTER K. APPEALS; JOINDER OF PARTIES

- 361.321. Appeals.
- 361.322. Appeal of Administrative Order Issued Under Section 361.272; Joinder of Parties.
- 361.323. Joinder of Parties in Action Filed by State.

[Sections 361.324 to 361.340 reserved for expansion]

SUBCHAPTER L. COST RECOVERY

- 361.341. Cost Recovery by State.
- 361.342. Cost Recovery by Appealing or Contesting Party.
- 361.343. Apportionment of Costs.
- 361.344. Cost Recovery by Liable Party or Third Party.
- 361.345. Creation of Rights.

SUBCHAPTER M. REMOVAL AND REMEDIAL ACTION AGREEMENTS

- 361.401. Definitions.
- 361.402. Commission Duties and Powers.
- 361.403. Terms and Conditions of Agreements; Costs.
- 361.404. Cooperation With Federal Government.
- 361.405. Indemnification of Engineer or Contractor.

SUBCHAPTER N. RECYCLING PROGRAMS; DISPOSAL FEES

- 361.421. Definitions.
- 361.422. State Recycling Goal.
- 361.423. Market Development Study and Implementation Program.
- 361.424. Recycling Awareness Campaign.
- 361.425. Governmental Entity Recycling.
- 361.426. Governmental Entity Preference for Recycled Products.
- 361.427. Specifications for Recycled Products.
- 361.428. Composting Program.
- 361.429. Household Hazardous Waste.
- 361.430. Newsprint Recycling Program.
- 361.431. Intrastate Transportation of Recyclable Materials.

[Sections 361.432 to 361.450 reserved for expansion]

SUBCHAPTER O. LEAD-ACID BATTERIES

- 361.451. Land Disposal Prohibited.
- 361.452. Collection for Recycling.
- 361.453. Inspection of Battery Retailers.
- 361.454. Lead-Acid Battery Wholesalers.
- 361.455. Penalty.
- 361.456. Enforcement.

[Sections 361.457 to 361.470 reserved for expansion]

SANITATION AND ENVIRONMENTAL QUALITY

Ch. 361

Section

SUBCHAPTER P. WASTE TIRE RECYCLING PROGRAM

- 361.471. Definitions.
- 361.472. Waste Tire Recycling Fees.
- 361.473. Enforcement; Penalties.
- 361.474. Disposition of Fees and Penalties.
- 361.475. Waste Tire Recycling Fund.
- 361.476. Priority Enforcement List.
- 361.477. Payments to Waste Tire Processors.
- 361.478. Evaluation of Recycling and Energy Recovery Activities; Certification for Payment.
- 361.479. Evidence of Financial Responsibility.
- 361.480. Tire Collection Fee Prohibited.
- 361.481. Prohibition on Out-of-State Tires.
- 361.482. Prohibition on Disposal of Shredded Tires in Landfill.
- 361.483. Civil Penalty.
- 361.484. Rules.
- 361.485. Report.

[Sections 361.486 to 361.500 reserved for expansion]

SUBCHAPTER Q. POLLUTION PREVENTION

- 361.501. Definitions.
- 361.502. Policy and Goals for Source Reduction and Waste Minimization.
- 361.503. Agency Plans.
- 361.504. Application.
- 361.505. Source Reduction and Waste Minimization Plans.
- 361.506. Source Reduction and Waste Minimization Annual Report.
- 361.507. Administrative Completeness.
- 361.508. Confidentiality.
- 361.509. Source Reduction and Waste Minimization Assistance.
- 361.510. Report to Legislature.

Historical and Statutory Notes

Acts 1991, 72nd Leg., ch. 14, § 130, and Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.046 amended the Subtitle heading.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. GENERAL PROVISIONS

Cross References

Funeral directing and embalming.

Initiation of action against establishment or in regard to license, for violations of this chapter, see Vernon's Ann.Civ.St. art. 4582b, sec. 4, subsec. D.

Inspection of premises for violations of this chapter, see Vernon's Ann.Civ.St. art. 4582b, sec. 4, subsecs. G, J.

Recycling, exemption from franchise tax, see V.T.C.A. Tax Code, § 171.085.

Administrative Code References

Solid waste management, see 25 TAC § 325.5 et seq.

Law Review Commentaries

Asset acquisitions: Caveat Emptor. James Ryan and Robert Beasley, 53 Tex.B.J. 1122 (1990).

LA. Debra L. Baker and Theodore G. Baroody, 22 St. Mary's L.J. 115 (1990).

What price innocence? A realistic view of the innocent landowner defense under CERC.

§ 361.001. Short Title

This chapter may be cited as the Solid Waste Disposal Act.

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

Historical and Statutory Notes

Acts 1991, 72nd Leg., 1st C.S., ch. 15, § 1.09, provides:

"Transfer of Environmental Protection Duties to the Texas Water Commission. (a) On March 1, 1992, the powers, duties, obligations, functions, and activities of the Texas Board of Health and the Texas Department of Health or the officers of those agencies assigned by the following provisions of law are transferred to the Texas Water Commission:

"(1) Subchapter C, Chapter 341, Health and Safety Code;

"(2) Chapter 361, Health and Safety Code;

"(3) Chapter 362, Health and Safety Code;

"(4) Chapter 363, Health and Safety Code;

"(5) Chapter 364, Health and Safety Code;

"(6) Chapter 365, Health and Safety Code;

"(7) Chapter 366, Health and Safety Code;

"(8) Chapter 367, Health and Safety Code;

"(9) Chapter 368, Health and Safety Code;

"(10) Chapter 401, Health and Safety Code, as it relates to the licensing and regulation of the disposal of radioactive substances, including by-product material, radioactive material, radioactive waste, source material, sources of radiation, and special nuclear material as those terms are defined by Section 401.003, Health and Safety Code; and

"(11) Chapter 402, Health and Safety Code.

"(b) The secretary of state is authorized to adopt rules as necessary to expedite the implementation of this section."

Prior Law:

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

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

Vernon's Ann.Civ.St. art. 4477-7, § 1.

Law Review Commentaries

Commanding respect: Criminal sanctions for environmental crimes. Eva M. Fromm, 21 St. Mary's L.J. 821 (1990).

§ 361.002. Policy; Findings

(a) It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated.

(b) The storage, processing, and disposal of hazardous waste at municipal solid waste facilities pose a risk to public health and the environment, and in order to protect the environment and to provide measures for adequate protection of public health, it is in the public interest to require hazardous

waste to be stored, processed, and disposed of only at permitted hazardous industrial solid waste facilities.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 1, eff. Sept. 6, 1990.

Historical and Statutory Notes

Section 1 of art. 1 of the 1990 amendatory act provides:

"(a) This Act is enacted as part of the state's continuing statutory revision program under Chapter 323, Government Code. This Act is a revision of statutes, without substantive change, for purposes of Article III, Section 43, of the Texas Constitution and has the purposes of:

"(1) conforming the Health and Safety Code to certain laws that were passed by the 71st Legislature and that amended the laws codified by the Health and Safety Code or enacted new laws that should be codified in the Health and Safety Code;

"(2) codifying certain laws that were omitted from the Health and Safety Code;

"(3) making necessary corrective changes in the Health and Safety Code; and

"(4) making necessary conforming amendments to other laws.

"(b) The Code Construction Act (Chapter 311, Government Code) applies to this Act as if this Act were a code governed by that Act.

"(c) The repeal of a law, including a validating law, by this Act does not remove, void, or

otherwise affect in any manner a validation under the repealed law. The validation is preserved and continues to have the same effect that it would have if the law were not repealed. This subsection does not diminish the saving provisions prescribed by the Code Construction Act (Section 311.031, Government Code).

"(d) A transition or saving provision of a law codified by this Act applies to the codified law to the same extent as it applies to the original law. The repeal of a transition or saving provision by this Act does not affect the application of the provision to the codified law. In this subsection, "transition provision" includes any temporary provision providing for a special situation during the transition period between the time of the existing law and the establishment or implementation of a new law."

Prior Law:

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

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

Acts 1989, 71st Leg., ch. 536, § 1.

Vernon's Ann.Civ.St. art. 4477-7, § 1.

§ 361.003. Definitions

Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Board" means the Texas Natural Resource Conservation Commission.

(3) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(4) "Class I nonhazardous industrial solid waste" means any Class industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(5) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(6) "Commission" means the Texas Natural Resource Conservation Commission.

(7) "Commissioner" means the executive director of the Texas Natural Resource Conservation Commission.

(8) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(9) "Department" means the Texas Natural Resource Conservation Commission.

(10) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(11) "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(12) "Executive director" means the executive director of the commission.

(13) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(14) "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

(B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(15) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(16) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(17) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(18) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas,

reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(19) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(20) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(21) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(22) "Motor vehicle" has the meaning assigned by Section 2(b), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(23) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(24) "Notice of intent to file an application" means the notice filed under Section 361.063.

(25) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(26) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(27) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(28) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render

the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission or department determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(29) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the board of health under that law.

(30) "Recycling" means the legitimate use, reuse, or reclamation of solid waste.

(31) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law,¹ or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(32) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking

containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(33) "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(34) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(35) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the commission.

(36) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(39) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(40) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the board of health or commission.

(41) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

(42) [Blank].

(43) [Blank].

(44) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any land or surface or subsurface water in the state that renders the land or water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare or impairs the usefulness or the public enjoyment of the land or water for any lawful or reasonable purpose.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 2, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, § 1.01, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.025, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.01, eff. Sept. 1, 1991.

¹ 42 U.S.C.A. § 9604.

Historical and Statutory Notes

Section 1.25(a), (d), (e) of Acts 1991, 72nd Leg., ch. 296 provides:

"(a) This article applies to any permit application, including permit applications for facilities operating under interim status, covered by

the terms of this article that is pending approval on the effective date of this article. Any application for renewal of or amendment to a permit for an existing facility that includes a request for authorization to increase capacity at the facility shall comply with the terms of this article; provided, however, that the provisions of Sections 1.16 and 1.17 of this article do not apply to an application for renewal of or amendment to a permit for an existing facility or to an existing facility burning waste-derived fuels under a Texas Water Commission or Texas Air Control Board permit on the effective date of this article."

"(d) The provisions of this article do not apply to applications that are on file on the effective date of this article and that are only for permits for the disposal of treatment residues and other nonincinerable wastes generated at the same facility or at facilities wholly owned by the applicant.

"(e) The provisions of this article apply to any application to amend a nonhazardous waste facility permit to accept hazardous waste that is pending approval on the effective date of this article and to all existing nonhazardous waste permits. If a nonhazardous waste facility has become a hazardous waste facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. The provisions of this article and this subsection do not apply to a noncommercial facility that is required to obtain a hazardous waste permit under the federal toxicity characteristic rule."

Sections 1.29 and 3.01 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.29. If either S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and is approved by the Governor, the duties, powers, and responsibilities conferred by this article on the Texas Water Commission, the Texas Department of Health, or the Texas Air Control Board

are transferred to the Texas Department of Natural Resources."

"Sec. 3.01. This Act may be referred to as the Waste Reduction Policy Act of 1991."

Neither S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, were passed or approved by the Governor.

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

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

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
 Acts 1973, 63rd Leg., ch. 576, § 1.
 Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
 Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
 Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2.
 Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
 Acts 1983, 68th Leg., p. 2946, ch. 503, § 1.
 Acts 1985, 69th Leg., ch. 566, § 1.
 Acts 1985, 69th Leg., ch. 795, § 1.160.
 Acts 1985, 69th Leg., ch. 921, § 3.
 Acts 1987, 70th Leg., ch. 279, § 1(a), (b).
 Acts 1987, 70th Leg., ch. 305, §§ 4, 5, 14(1), (2).
 Acts 1989, 71st Leg., ch. 536, § 2.
 Acts 1989, 71st Leg., ch. 641, § 2.
 Acts 1989, 71st Leg., ch. 703, §§ 1, 6.
 Vernon's Ann.Civ.St. art. 4477-7, § 2.

Cross References

Recycling, exemption from franchise tax, see V.T.C.A. Tax Code, § 171.085.
 Removal and remedial action agreements, petroleum, see § 361.401.

[Sections 361.004 to 361.010 reserved for expansion]

supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

Subdivision (37) expires on delegation of Resource Conservation and Recovery Act authority to the Railroad Commission of Texas

(37) This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

Subdivision (38) is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas

(38) This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term: