

US EPA ARCHIVE DOCUMENT



Signed
11/30/92

Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

ATTORNEY GENERAL'S STATEMENT
FOR NON-H.S.W.A. CLUSTER VI

I hereby certify, pursuant to my authority as Attorney General of the State of Texas and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 USC 6901 et seq.), and 40 CFR 271 that in my opinion the laws of the State of Texas provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Texas Water Commission (also "Commission"). The specific authorities provided, which are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which shall be fully effective by the time the program is approved, are specified below. These authorities and this certification supplements the previously certified authorities described in my certifications of December 4, 1989 (non-HSWA III and HSWA I) and April 20, 1990. This revised Attorney General's Statement is for non-HSWA Cluster VI and will supplement all previous state authorizations.

I. IDENTIFICATION AND LISTING

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

- (15) Amendments to the F019 hazardous waste listing to exclude wastewater treatment sludges from zirconium phosphating in aluminum can washing, when such phosphating is an exclusive conversion coating process, 40 CFR 261.31, as amended February 14, 1990 [55 FR 5340], Revision Checklist 72.
- (17) Listing of one waste (F039), 40 CFR 261.31 and Part 261 Appendix VII, as amended June 1, 1990 [55 FR 22520] and January 31, 1991 [56 FR 3864], Revision Checklist 78.

Federal Authority: RCRA §3001(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

State Statutes:

Texas Solid Waste Disposal Act §§361.003, 361.017, and 361.024, TEXAS HEALTH AND SAFETY CODE ANN., Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended.

Texas Water Code §§5.103, 5.105, and 26.011, TEX. WATER CODE ANN. Chapters 5 and 26 (Vernon 1992), effective September 1, 1985, as amended.

State Regulation:

31 TAC 335.1, effective August 4, 1989.

Remarks of the Attorney General

Section 361.001 of the Texas Solid Waste Disposal Act, TEXAS HEALTH AND SAFETY CODE ANN. Chapter 361 (Vernon's Supp. 1992), empowers the Texas Water Commission ("TWC") to adopt rules and establish minimum standards of operation for the management and control of solid waste. The TWC's jurisdiction concerning industrial solid waste and hazardous municipal waste is contained in §361.017 of the Act.

The TWC's rulemaking authority is derived from §361.024 of the Act.

The general powers and duties of the TWC to administer the provisions of the Texas Water Code (the "Code"), TEX. WATER CODE (Vernon 1992) are found in §26.011. Additional rulemaking authority for the TWC is found in §§5.103 and 5.105 of the Code.

J. State statutes and regulations that:

- (1) provide final criteria to define Bevill-excluded mineral processing wastes, finalize the Bevill status of nine mineral processing waste streams, and list those mineral processing wastes subject to conditional retention as indicated in Revision Checklist 65.

Federal Authority: RCRA §3001(b); 40 CFR 261.3 and 261.4 as amended September 1, 1989 (54 FR 36592).

Citation of Laws and Regulations; Date of Enactment and Adoption

State Statutes:

Texas Solid Waste Disposal Act §§361.003, 361.017, and 361.024, TEXAS HEALTH AND SAFETY CODE ANN., Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended.

Texas Water Code §§5.103, 5.105, and 26.011, TEX. WATER CODE ANN. Chapters 5 and 26 (Vernon 1992), effective September 1, 1985, as amended.

State Regulation:

31 TAC 335.1, effective August 4, 1989.

Remarks of the Attorney General

Not Applicable: state statutes and regulations are equivalent to federal program.

- (2) remove five conditionally retained mineral processing wastes from the exemption from hazardous waste regulation under the Bevill exclusion, and amend the definitions of "beneficiation" and "designated facility" as indicated in Revision Checklist 71.

Federal Authority: RCRA §3001(b)(3)(A)(ii); 40 CFR 260.10 and 261.4(b)(7) as amended January 23, 1990 (55 FR 2322) and June 13, 1991 (56 FR 27300).

Citation of Laws and Regulations; Date of Enactment and Adoption

State Statutes:

Texas Solid Waste Disposal Act §§361.003, 361.017, and 361.024, TEXAS HEALTH AND SAFETY CODE ANN., Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended.

Texas Water Code §§5.103, 5.105, and 26.011, TEX. WATER CODE ANN. Chapters 5 and 26 (Vernon 1992), effective September 1, 1985, as amended.

State Regulation:

31 TAC 335.1, effective August 4, 1989.

Remarks of the Attorney General

Not applicable: state statutes and regulations are equivalent to federal program.

- K. State statutes and regulations incorporate 47 new testing methods as approved methods for use in meeting the regulatory requirements under Subtitle C of RCRA as indicated in Revision Checklists 67 and 73.

Federal Authority: RCRA §§3001, 3004, 3005, and 3006; 40 CFR 260.11 and Part 261 Appendix III as amended September 29, 1989 (54 FR 40260) and March 9, 1990 (55 FR 8948).

Citation of Laws and Regulations; Date of Enactment and Adoption

State Statutes:

Texas Solid Waste Disposal Act §§361.003, 361.017, and 361.024, TEXAS HEALTH AND SAFETY CODE ANN., Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended.

Texas Water Code §§5.103, 5.105, and 26.011, TEX. WATER CODE ANN. Chapters 5 and 26 (Vernon 1992), effective September 1, 1985, as amended.

State Regulations:

31 TAC 335.2(j), proposed effective date of adoption: June 30, 1993 as amended.

31 TAC 335.29, proposed effective date of adoption: June 30, 1993 as amended.

Remarks of the Attorney General

Not applicable: state statutes and regulations are equivalent to federal program.

- M. State statutes and regulations contain the language to reflect EPA's intent and consistent interpretation of the criteria for listing wastes as hazardous under RCRA as indicated in Revision Checklist 76.

Federal Authority: RCRA §3001(a); 40 CFR 261.11(a)(3) as amended May 4, 1990 (55 FR 18726).

Citation of Laws and Regulations; Date of Enactment and Adoption

State Statutes:

Texas Solid Waste Disposal Act §§361.003, 361.017, and 361.024, TEXAS HEALTH AND SAFETY CODE ANN., Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended.

Texas Water Code §§5.103, 5.105, and 26.011, TEX. WATER CODE ANN. Chapters 5 and 26 (Vernon 1992, effective September 1, 1985, as amended.

State regulations:

31 TAC 335.1, effective August 4, 1989.

Remarks of the Attorney General

Not applicable: state statutes and regulations are equivalent to federal program.

VII. NATIONAL UNIFORM MANIFEST SYSTEM AND RECORDKEEPING

- E. State statutes and regulations require that generators who ship hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility, as indicated in Revision Checklist 71.

Federal Authority: RCRA §§2002, 3002 and 3003; 40 CFR 262.23(e) as amended on January 23, 1990 (55 FR 2322).

Citation of Laws and Regulations; Date of Enactment and Adoption

State Statutes:

Texas Solid Waste Disposal Act §§361.003, 361.017, and 361.024, TEXAS HEALTH AND SAFETY CODE ANN., Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended.

Texas Water Code §§5.103, 5.105, and 26.011, TEX. WATER CODE ANN. Chapters 5 and 26 (Vernon 1992), effective September 1, 1985, as amended.

State regulations:

31 TAC 335.10(a)(6), proposed effective date of adoption: June 30, 1993, as amended.

Remarks of the Attorney General

Not applicable: state statutes and regulations are equivalent to federal program.

XV. STANDARDS FOR FACILITIES

- G. State statutes and regulations require compliance with closure/post-closure and financial responsibility requirements applicable to owners and operators of

hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklist 24.

Federal Authority: RCRA §§3004 and 3005; 40 CFR Parts 260, 264, 265, and 270 as amended May 2, 1986 (51 FR 16422), March 19, 1987 (52 FR 8704) and December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations; Date of Enactment and Adoption

State Statutes:

Texas Solid Waste Disposal Act §§361.017 and 361.024, TEXAS HEALTH AND SAFETY CODE ANN. Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended.

Texas Water Code §§5.103, 5.105, and 27.019, TEX. WATER CODE ANN. Chapters 5 and 27 (Vernon 1992), effective September 1, 1985, as amended.

State Regulations:

31 TAC 335.112(a)(6), effective December 13, 1991.

31 TAC 335.152(a)(5), effective December 13, 1991.

Remarks of the Attorney General

Not applicable: state statutes and regulations are equivalent to federal program.

- K. State statutes and regulations allow owners and operators of landfills, surface impoundments, or land treatment units, under limited circumstances, to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit as indicated in Revision Checklist 64.

Federal Authority: RCRA §§1006, 2002(a), 3004, 3005 and 3006; 40 CFR 264.13, 264.112, 264.113, 264.142, 265.13, 265.112, 265.113, and 265.142 as amended August 14, 1989 (54 FR 33376).

Citation of Laws and Regulations; Date of Enactment and Adoption

State Statutes:

Texas Solid Waste Disposal Act §§361.017 and 361.024, TEXAS HEALTH AND SAFETY CODE ANN. Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended.

Texas Water Code §§5.103, 5.105, and 27.019, TEX. WATER CODE ANN. Chapters 5 and 27 (Vernon 1992), effective September 1, 1985, as amended.

State Regulations:

31 TAC 335.152(a), effective December 13, 1991.
31 TAC 335.152(a)(1), effective December 13, 1991.
31 TAC 335.152(a)(5), effective December 13, 1991.
31 TAC 335.152(a)(6), effective December 13, 1991.
31 TAC 335.112(a), effective December 13, 1991.
31 TAC 335.112(a)(1), effective December 13, 1991.
31 TAC 335.112(a)(6), effective December 13, 1991.
31 TAC 335.112(a)(7), effective December 13, 1991.
31 TAC 305.69(h), Appendix I, D.1.f., effective October 29, 1990.

Remarks of the Attorney General

Not applicable: state statutes and regulations are equivalent to federal program.

XVI. REQUIREMENTS FOR PERMITS

- V. State statutes and regulations incorporate updates to 40 CFR Part 124 as indicated in Revision Checklist 70.

Federal Authority:

RCRA §§6901 and 6902; 40 CFR 124.3, 124.5, 124.6, 124.10 and 124.12 as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), July 26, 1988 (53 FR 28118), September 26, 1983 (53 FR 37396) and January 4, 1989 (54 FR 246).

Citation of Laws and Regulations; Date of Enactment and Adoption

State Statutes:

Texas Solid Waste Disposal Act §§361.017, 361.024, 361.032, 361.066, and 361.068, TEXAS HEALTH AND SAFETY CODE ANN. Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended.

Texas Water Code §§5.103, 5.105, 26.011, and 27.019, TEX. WATER CODE ANN. Chapters 5, 26, and 27 (Vernon 1992), effective September 1, 1985, as amended.

State Regulations:

31 TAC 281.22, effective July 14, 1987.
31 TAC 305.42, effective October 29, 1990.
31 TAC 305.44, effective October 29, 1990.
31 TAC 305.62, effective October 29, 1990.
31 TAC 305.66, effective April 21, 1989.
31 TAC 305.100, effective October 8, 1990.

31 TAC 305.101, effective October 8, 1990.
31 TAC 305.102, effective October 29, 1990.
31 TAC 305.103, effective October 29, 1990.
31 TAC 305.105, effective October 29, 1990.
31 TAC 305.121, effective October 8, 1990.
31 TAC 305.122(a) effective October 8, 1990.
31 TAC 305.123, effective June 19, 1986.
31 TAC 305.124, effective June 19, 1986.
31 TAC 305.125, effective October 8, 1990.
31 TAC 305.127(1)(B), (2) and (3), effective October 29, 1990.
31 TAC 305.128, effective October 8, 1990.
31 TAC 305.141, effective June 19, 1986.
31 TAC 305.142, effective June 19, 1990.
31 TAC 305.143, effective June 19, 1990.
31 TAC 305.144, effective October 29, 1990.
31 TAC 305.145, effective April 8, 1987.
31 TAC 305.146, effective June 19, 1986.

Remarks of the Attorney General

Not applicable: state statutes and regulations are equivalent to federal program.

XXII. MEMORANDUM OF AGREEMENT (MOA)

- (1) The State has the authority to enter into the agreement;
- (2) The State has the authority to carry out the agreement; and
- (3) No applicable State statute (including the Administrative Procedure and Texas Register Act, TEX.REV.CIV.STAT.ANN. art. 6252-13a [Vernon's 1992] requires that the procedure be promulgated as a rule in order to be binding.

SEAL OF OFFICE



Dan Morales,
Attorney General of Texas

Date: 11-30-92