

US EPA ARCHIVE DOCUMENT

## 30 TAC § 304.63

ministration) and, as applicable, either or the following:

(1) a user fee, which is the mathematical product of the total assessment account and the appropriate assessment rate as determined by § 304.62 of this title (relating to Determination of Assessment Rates); provided, however, that if the water right authorizes more than one type of use, and if the maximum amount of water authorized to be used annually for all uses (the maximum total authorization) is less than the sum of the maximum amounts authorized to be used annually for each use (the sum of all authorizations), then, in calculating the fee for each account the number to be used for the authorized amount shall be the product of the maximum total authorization and a fraction whose numerator is the amount of water authorized for that use, and whose denominator is the sum of all authorizations; and also provided that the water right holder or the executive director may apply to the commission for, and the commission may grant, an order providing, for assessment purposes only, that different portions of the total amount of water authorized be applied to the various authorized uses; and

(2) a storage fee for on-channel storage, which is calculated by multiplying the total amount of

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water authorized for conservation storage under that assessment account by the storage assessment rate as determined by §304.62 of this title (relating to Determination of Assessment Rates). For any water right authorizing storage and more than one type of use for the same owner, the storage fee for that owner's total storage authorization shall be applied to the assessment account for any one of the uses associated with that owner.

(b) The assessment shall be paid to the executive director in advance of expenditures. The executive director shall specify the dates by which payments shall be due, and may provide for payments in installments. The executive director shall transmit all collections to the state treasurer to be held in a special fund to provide for the cost of the water-master operation.

(c) Water shall not be diverted, taken, stored, or used by any diverter or agent while any assessment payment is delinquent.

(d) Either the water right owner or agent shall pay the assessment, but only one person per assessment account shall be authorized to pay assessments.

Source: The provisions of this §304.63 adopted to be effective August 5, 1988, 13 TexReg 3639.

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**Authority:** The provisions of this Chapter 305 issued under the Texas Water Code, §5.103 and §5.105, unless otherwise noted.

**Cross References:** This Chapter cited in 30 TAC §310.2, (relating to Purpose and Scope); 30 TAC §310.3, (relating to Applicability); 30 TAC §310.5, (relating to Permits Required); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §321.132, (relating to Applicability); 30 TAC §321.141, (relating to Additional Characteristics and Conditions for Control of Certain Activities by Rule); 30 TAC §329.9, (relating to Procedures for Application); 30 TAC §331.8, (relating to Application Required for Existing Wells); 30 TAC §331.121, (relating to Class I Wells); 30 TAC §335.23, (relating to Procedures for Case-By-Case Regulation of Hazardous Waste Recycling Activities); 30 TAC §335.24, (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); 30 TAC §335.61, (relating to Purpose, Scope, and Applicability); 30 TAC §335.69, (relating to Accumulation Time); 30 TAC §335.78, (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); 30 TAC §335.201, (relating to Purpose, Scope, and Applicability); 30 TAC §335.202, (relating to Definitions); 30 TAC §335.213, (relating to Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate); 30 TAC §335.214, (relating to Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal); 30 TAC §335.222, (relating to Management Prior to Burning); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners); 30 TAC §335.251, (relating to Applicability and Requirements); 30 TAC §335.559, (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2); 30 TAC §335.563, (relating to Media Cleanup Requirements for Risk Reduction Standard Number 3).

### SUBCHAPTER A. GENERAL PROVISIONS

#### § 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 pollutants discharge elimination system. The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in the 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 §122.24;

(C) discharges into aquaculture projects as set forth in 40 Code of Federal Regulations §122.25;

(D) discharges from separate storm sewers as set forth in 40 Code of Federal Regulations §122.26; and

(E) silvicultural point sources as defined in 40 Code of Federal Regulations §122.27.

(2) The 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 included in a permit issued under the appropriate provisions of the Federal Solid Waste Disposal Act, Subtitle C, 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 Clean Water Act, §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 the sludge use and disposal developed



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under the Clean Water Act, §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.

**Source:** The provisions of this §305.1 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492.

### § 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 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.

**Component**—Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

**Continuous discharge**—A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shut-downs 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 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.

Facility mailing list—The mailing list for a facility seeking a Class I injection well UIC permit. The facility mailing list, which is described in 40 Code of Federal Regulations §120.10(c)(viii), is maintained by the Texas Natural Resource Conservation Commission in accordance with §305.103(b) of this title (relating to Notice by Mail).

Functionally equivalent component—A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

Indirect discharger—A nondomestic discharger introducing pollutants to a POTW.

Injection well permit—A permit issued pursuant to 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 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 the 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

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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.

**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 Avenue, 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 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.

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

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

**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.

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**Source:** The provisions of this §305.2 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 23, 1993, 18 TexReg 8215.

**Cross References:** This Section cited in 30 TAC §305.1, (relating to Scope and Applicability); 30 TAC §305.534, (relating to New Sources and New Dischargers).

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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.

**Source:** The provisions of this §305.3 adopted to be effective October 8, 1990, 15 TexReg 5492.

### SUBCHAPTER B. EMERGENCY ORDERS, TEMPORARY ORDERS, AND EXECUTIVE DIRECTOR AUTHORIZATIONS

**Cross References:** This Subchapter cited in 30 TAC §335.446, (relating to Emergency Placement of Warning Signs).

### § 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.

**Source:** The provisions of this §305.21 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.535, (relating to Bypasses from TPDES Permitted Facilities); 30 TAC §321.80, (relating to Associated Facilities).

### § 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, for 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;

(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).

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(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 Texas pollutant discharge elimination system regulations.

**Source:** The provisions of this §305.22 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.26, (relating to Hearings for Temporary Orders, Executive Director Authorizations, and Emergency Orders); 30 TAC §305.27, (relating to Application Fees).

### § 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, 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.

**Source:** The provisions of this §305.23 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 1202; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.25, (relating to Executive Director Authorizations to Discharge); 30 TAC §305.27, (relating to Application Fees); 30 TAC §305.535, (relating to Bypasses from TPDES Permitted Facilities).

### § 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, concerning 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.

**Source:** The provisions of this §305.24 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102.

**Cross References:** This Section cited in 30 TAC §305.23, (relating to Emergency Orders).

### § 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 execu-

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tive 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.

**Source:** The provisions of this §305.25 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102.

**Cross References:** This Section cited in 30 TAC §305.22, (relating to Application for Orders or Authorizations To Discharge); 30 TAC §305.26, (relating to Hearings for Temporary Orders, Executive Director Authorizations, and Emergency Orders).

### § 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 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).

**Source:** The provisions of this §305.26 adopted to be effective June 19, 1986, 11 TexReg 2591.

### § 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.

**Source:** The provisions of this §305.27 adopted to be effective June 19, 1986, 11 TexReg 2591.

**Cross References:** This Section cited in 30 TAC §305.22, (relating to Application for Orders or Authorizations To Discharge).

### § 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



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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.

**Source:** The provisions of this §305.28 adopted to be effective June 19, 1986, 11 TexReg 2591.

### § 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 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.

**Source:** The provisions of this §305.29 adopted to be effective June 19, 1986, 11 TexReg 2591.

**Cross References:** This Section cited in 30 TAC §305.27, (relating to Application Fees).

### § 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 nonpermitted 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

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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).

**Source:** The provisions of this §305.30 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102.

**Cross References:** This Section cited in 30 TAC §305.27, (relating to Application Fees).

### SUBCHAPTER C. APPLICATION FOR PERMIT

#### § 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, the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

**Source:** The provisions of this §305.41 adopted to be effective June 19, 1986, 11 TexReg 2593.

**Cross References:** This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit).

#### § 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) of this title (relating to Permit Required) and the Solid Waste Disposal Act, Texas Health and Safety Code Annotated, 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 sub-

mit 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 Annotated, 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 Code of Federal Regulations §270.73 and certify that such a facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

**Source:** The provisions of this §305.42 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective August 30, 1988, 13 TexReg 4071; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit).

#### § 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.

**Source:** The provisions of this §305.43 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit).



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### § 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.

**Source:** The provisions of this §305.44 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.22, (relating to Application for Orders or Authorizations To Discharge); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.70, (relating to Municipal Solid Waste Class I Modifications); 30 TAC §305.128, (relating to Signatories to Reports); 30 TAC §305.172, (relating to Determining Feasibility of Compliance and Adequate Operating Conditions); 30 TAC §305.183, (relating to Certification); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §305.572, (relating to Permit and Trial Burn Requirements); 30 TAC §312.10, (relating to Permit and Registration Applications Processing); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §330.52, (relating to Technical Requirements of Part I of 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 8-½ 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;

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(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 more than one outfall, place of deposit, or other place of disposal covered in the application.

**Source:** The provisions of this §305.45 adopted to be effective June 19, 1986, 11 TexReg 2593.

**Cross References:** This Section cited in 30 TAC §305.46, (relating to Designation of Material as Confidential); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §330.51, (relating to Permit Application for Municipal Solid Waste Facilities); 30 TAC §330.52, (relating to Technical Requirements of Part I of the Application); 30 TAC §330.60, (relating to Technical Requirements of an Application for Registration of Solid Waste Facilities (Type V and Type VI)); 30 TAC §330.65, (relating to

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Requirements of an Application for Registration of Solid Waste Facilities (Type V)).

### § 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

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Application for Permit) will not be considered confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

Source: The provisions of this §305.46 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §312.11, (relating to Permits); 30 TAC §331.68, (relating to Post-Closure Care).

### § 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.

Source: The provisions of this §305.47 adopted to be effective June 19, 1986, 11 TexReg 2593.

Cross References: This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).

### § 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:

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(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 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 nonprocess 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 Standards 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.

**Source:** The provisions of this §305.48 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.22, (relating to Application for Orders or Authorizations To Discharge); 30 TAC §305.45, (relating to Contents of Application for Permit); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.536, (relating to Requirements for Applications and Permits with Sludge Related Conditions).

### § 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 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 nonradioactive 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.

(c) An application under this section shall comply with the requirements of §305.50(4)(B) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

**Source:** The provisions of this §305.49 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective January 5, 1988, 12 TexReg 4860; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective November 7, 1991, 16 TexReg 6051.

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**Cross References:** This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

### § 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. Also to be submitted are listings of evidence of noncompliances concerning solid waste management by the permit holder in the preceding five years at the permitted site, listings of evidence of noncompliances concerning solid waste management in the preceding five years at any site owned, operated, or controlled by the applicant in the State of Texas, a summary of the attempts of the permit holder to correct the environmental violations, and an indication of whether the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by the Texas Solid Waste Disposal Act or by any rule of the commission. For purposes of this subsection, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(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 (relat-

ing 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) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) 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 (CFR) §§270.13-270.26, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), (4), (b), and (c), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Such financial information may include, but is not limited to, the following:

(i) current and two previous years audited financial statements prepared in accordance with generally accepted auditing standards, including an opinion as to the fairness of the financial statements and accompanying notes;

(ii) current and two previous years Form 10-K annual reports filed with the Securities and Exchange Commission;

(iii) relevant information concerning investors and stockholders; and

(iv) information required by Code of Federal Regulations, Title 40, Part 264, Subpart H.

(C) If any of the information required to be disclosed under subparagraph (B) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(D) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency, that:

(i) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(E) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F 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 CFR §§270.14-270.26. 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 hydrogeologic report documenting the potential ef-

fects, if any, on the regional aquifer in the event of a release from the waste containment system.

(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 a release.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application shall also contain the following:

(A) copies of any relevant land use plans, adopted pursuant to the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;



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(B) identification of the names and locations of industrial and other waste-generating facilities within  $\frac{1}{2}$  mile of the facility in the case of an application for a permit for a new on-site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(D) of this section.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous waste management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles travelling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles travelling to and from the facility within a minimum radius of  $2\frac{1}{2}$  miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the  $2\frac{1}{2}$  mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways. Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 Code of Federal Regulations §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;



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(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., TWC, Texas Parks and Wildlife, General Land Office, Texas Air Control Board, Texas Department of Health, and Texas Railroad Commission);

(X) a showing of coordination with the local emergency planning committee and any local comprehensive emergency management plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

(II) costs involved in supplying any of the information included in or satisfying any of the requirements of clause (i)(I)-(XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities pursuant to §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or

other appropriate entity such as professional organizations regularly doing business in the area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a summary of the applicant's experience in hazardous waste management and in the particular hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in Title 40, CFR §266.11) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) and (1)(B)(iii) of this title (relating to Conditions To Be Determined for Individual Permits).

**Source:** The provisions of this §305.50 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective January 5, 1988, 12 TexReg 4861; amended to be effective August 4, 1989, 14 TexReg 3531; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 7, 1991, 16 TexReg 6051; amended to be effective July 29, 1992, 17 TexReg 5016; amended to be effective November 23, 1993, 18 TexReg 8215.

**Cross References:** This Section cited in 30 TAC §281.26, (relating to Applications for New Commercial Hazardous Waste Management Facility Permits); 30 TAC §305.45, (relating to Contents of Application for Permit); 30 TAC §305.49, (relating to Additional Contents of Application for an Injection Well Permit); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.66, (relating to Permit Denial, Suspension, and Revocation); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30

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TAC §335.183, (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities).

### § 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 Code of Federal Regulations (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 CFR §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;

(3) changes in the processes for management of the waste occur or additional processes are added;

(4) changes in the ownership or operational control of a facility are made; or

(5) newly regulated units for the storage, processing, or disposal of hazardous waste are added.

(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 CFR §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 CFR §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.

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management fa-

cility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) changes made solely for the purposes of complying with the requirements of 40 CFR §265.193 for tanks and ancillary equipment;

(2) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of the Resource Conservation and Recovery Act (RCRA), §3004(o), as amended;

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been stored, processed, or disposed of at the facility prior to the effective date of the United States Environmental Protection Agency (EPA) regulation establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the EPA under the RCRA, §3008(h), as amended, or other federal authority, by an authorized state under comparable state authority, or by a court in a judicial proceeding brought by the EPA or an authorized state, provided that such changes are limited to the storage, processing, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to store or process, in tanks or containers, hazardous wastes subject to land disposal restrictions imposed by 40 CFR Part 268 or by the RCRA, §3004, provided that such changes are made solely for the purpose of complying with 40 CFR Part 268 or the RCRA, §3004, as amended; and

(7) addition of newly regulated units under subsection (a)(5) of this section.

Source: The provisions of this §305.51 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective July 29, 1992, 17 TexReg 5016.

Cross References: This Section cited in 30 TAC §120.3, (relating to Applicability); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §335.201, (relating to Purpose,

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Scope, and Applicability); 30 TAC §335.202, (relating to Definitions); 30 TAC §335.362, (relating to Applicability).

### § 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.

**Source:** The provisions of this §305.52 adopted to be effective June 19, 1986, 11 TexReg 2593.

**Cross References:** This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

### § 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:

- (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 to be applied toward the cost of providing required notice. A fee of \$15 is required with each application for renewal.

**Source:** The provisions of this §305.53 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.64, (relating to Transfer of Permits); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §335.321, (relating to Purpose).

## SUBCHAPTER D. AMENDMENTS, RE-NEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

**Cross References:** This Subchapter cited in 30 TAC §305.572, (relating to Permit and Trial Burn Requirements); 30 TAC §331.68, (relating to Post-Closure Care).

### § 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.

**Source:** The provisions of this §305.61 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications).

### § 305.62. Amendment

(a) Causes for amendment. Except as provided in §305.69 of this title (relating to Solid Waste Permit

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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 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 a Texas pollutant discharge elimination system (TPDES) permit which is defined in subparagraph (C) of this paragraph. 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 Code of Federal Regulations (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), (f), (m)(4)(i)(B), and §122.42(a) issued September 26, 1984; or

(vi) incorporate conditions of a publicly owned treatment work (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.

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(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.

**Source:** The provisions of this §305.62 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3513; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.63, (relating to Renewal); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.70, (relating to Municipal Solid Waste Class I Modifications); 30 TAC §305.122, (relating to Characteristics of Permits); 30 TAC §305.127, (relating to Conditions To Be Determined for Individual Permits); 30 TAC §305.172, (relating to Determining Feasibility of Compliance and Adequate Operating Conditions); 30 TAC §305.184, (relating to Permit Amendment or Modification); 30 TAC §305.534, (relating to New Sources and New Dischargers); 30 TAC §311.4, (relating to Existing Facilities in Water Quality Areas); 30 TAC §311.14, (relating to Existing Facilities in Water Quality Areas); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §330.1, (relating to Declaration and Intent); 30 TAC §330.4, (relating to Permit Required); 30 TAC §330.15, (relating to Effective Date ); 30 TAC §330.64, (relating to Additional Standard Permit Conditions for Municipal Solid Waste Facilities); 30 TAC §331.12, (relating to Conversion of Wells); 30 TAC §335.45, (relating to Effect on Existing Facilities); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

## § 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.

(1) An application for renewal may be in the same form as that required for the original permit application.

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(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-publicly owned treatment works to submit the information required by 40 Code of Federal Regulations §122.21(g)(10) after the permit expiration date.

**Source:** The provisions of this §305.63 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications).

### § 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) of this section, 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:

(1) 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, including proof of such 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 transfer or 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, Texas Health and Safety Code Annotated, Chapter 361, 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 (relating to Solid Waste Permit Modification at the Request of the Permittee). 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 (CFR) Part 264, Subpart H, as adopted by reference in §335.152(a)(6) of this title (relating to Standards), until the new owner or operator has demonstrated to the executive director that he is complying with the requirements of 40 CFR Part 264, Subpart H. The new owner or operator must demonstrate compliance with 40 CFR 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 CFR Part 264, Subpart H, the executive director shall notify the old owner or operator that he no longer needs to comply with 40 CFR 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;
- (2) the permittee is about to abandon or cease operation of the facilities;
- (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 waste 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 the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

**Source:** The provisions of this §305.64 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 19, 1989, 14 TexReg 3297; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.125, (relating to Standard Permit Conditions); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications).

### § 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;



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(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.

**Source:** The provisions of this §305.65 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102.

**Cross References:** This Section cited in 30 TAC §305.63, (relating to Renewal); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications).

### § 305.66. Permit Denial, Suspension, and Revocation

(a) A permit or other order of the commission does not become a vested right and may be suspended or revoked 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 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 the Texas Water Code, §26.084.

(c) The commission may, for good cause, deny, 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 it issues or has authority to issue 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 further proceedings. Failure to provide such notice shall not be jurisdictional.

(f) The commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if the commission finds after notice and hearing, that:

(1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;

(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant;

(3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instru-

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ment relating to the application submitted to the commission, its officers, or its employees;

(4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by a rule of the commission;

(5) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(g) Before denying, suspending, or revoking a permit under this section, the commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by rule of the commission.

(h) The commission may not suspend a new commercial hazardous waste management permit on the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title (relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility).

(i) For applications for new hazardous waste management facility permits, the commission may deny such an application if it determines that the facility is not compatible with local land use pursuant to §335.180 of this title (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use).

(j) For applications for new commercial hazardous waste management facility permits, the commission may not deny such an application on the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title (relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility).

(k) For applications for any new commercial hazardous waste management facility permits, the commission shall not grant such an application if

the applicant is without experience in the particular hazardous waste management technology and has not conspicuously stated that lack of experience in the application, and the commission shall not grant such an application unless the applicant provides a summary of its experience, pursuant to §305.50(12)(D) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit). The commission may not deny an application for a new commercial hazardous waste management facility permit solely on the basis of lack of experience of the applicant.

(l) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

**Source:** The provisions of this §305.66 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective November 7, 1991, 16 TexReg 6051.

**Cross References:** This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.63, (relating to Renewal); 30 TAC §305.67, (relating to Revocation and Suspension upon Request or Consent); 30 TAC §305.122, (relating to Characteristics of Permits); 30 TAC §305.141, (relating to Applicability); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §331.12, (relating to Conversion of Wells); 30 TAC §335.180, (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use); 30 TAC §335.223, (relating to Additional Permit Standards for Burners).

### § 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.

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Source: The provisions of this §305.67 adopted to be effective June 19, 1986, 11 TexReg 2594.

Cross References: This Section cited in 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications); 30 TAC §331.12, (relating to Conversion of Wells).

### § 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.

Source: The provisions of this §305.68 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102.

Cross References: This Section cited in 30 TAC §305.66, (relating to Permit Denial, Suspension, and Revocation); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §321.75, (relating to Term, Modifications).

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

(a) This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are covered in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications).

(b) Class 1 modifications of solid waste permits.

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(1) Except as provided in paragraph (2) of this subsection, 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 persons 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.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (b) of this section 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 subsection (b)(1) of this section.

(c) 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), and §§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 paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(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 doc-

uments 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 (2) of this subsection 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 subsection (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 subsection (c) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification;

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(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 (7) of this subsection 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 (6) and (7) of this subsection or this paragraph, such action cancels the temporary or automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, 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 (9) of this subsection, 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 (13) of this subsection, 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 paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (e) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, 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 (6)-(8) of this subsection 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.

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(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.

(d) 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 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 paragraph (4) of this subsection;

(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 (2) of this subsection 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.

(e) 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 (1) of this subsection 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 modifica-



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tions 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.

### (f) 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 (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii)-(v) of this subsection 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 Code of Federal Regulations (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 subsection (b)(6)(D) or (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 subsection (c) of this section are conducted.

(g) 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 subsection (b)(8) or (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 Register Act, Texas Civil Statutes, Article 6252-13(a).

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261 or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of 40 CFR Part 265 and Part 266;

(D) in the case of Classes 2 and 3 modifications, the permittee also submits a complete permit modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to RCRA Subtitle C management standards; and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR Part 265 groundwater 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, or regulating the unit as a hazardous waste management unit. 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% capacity expansion limit for Class 2 modifications.

(i) Appendix I. The following appendix will be used for the purposes of this subchapter 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     |
| 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     |
| 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     |
| 7. Changes in ownership or operational control of a facility, provided the procedures of § 305.65(g) are followed .....               | 1     |
| B. General Standards                                                                                                                  |       |
| 1. Changes to waste sampling or analysis methods:                                                                                     |       |
| a. To conform with agency guidance or regulations .....                                                                               | 1     |
| b. To incorporate changes associated with FO39 (multi-source leachate) sampling or analysis methods .....                             | 1     |
| c. Other changes.....                                                                                                                 | 2     |
| 2. Changes to analytical quality assurance/control plan:                                                                              |       |
| a. To conform with agency guidance or regulations .....                                                                               | 1     |

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 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. (No change)   |       |
| c. Ground-water Protection                                                                                                                                                                                                                       |       |
| 1. Changes to wells:                                                                                                                                                                                                                             |       |
| a. Changes in the number, location, depth, or design of up-gradient or downgradient wells of permitted ground-water 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 ...1 <sup>1</sup>                                                                                                |       |
| 3. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred, with prior approval of the executive director .....1 <sup>1</sup> |       |
| 4. Changes in point of compliance.....2                                                                                                                                                                                                          |       |
| 5. Changes in indicator parameters, hazardous constituents, or con-                                                                                                                                                                              |       |

| Modifications                                                                                                                                                                                                     | Class |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| centration 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(7)(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 <sup>1</sup> |       |
| b. Changes in the closure schedule for 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 <sup>1</sup>    |       |

| Modifications                                                                                                                                          | Class | Modifications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Class |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| E. Post-Closure                                                                                                                                        |       | F. Containers                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |       |
| 1. Changes in name, address, or phone number of contact in post-closure plan . . . . .                                                                 | 1     | 1. Modification or addition of container units:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |       |
| 2. Extension of post-closure care period . . . . .                                                                                                     | 2     | 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     |
| 3. Reduction in the post-closure care period . . . . .                                                                                                 | 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     |
| 4. Changes to the expected year of final closure, where other permit conditions are not changed . . . . .                                              | 1     | 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) . . . . . | 1     |
| 5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure . . . . . | 2     | 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 alteration 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.                                                                                                                                                                                                                                                                                                                                                              |       |

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| Modifications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Class |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 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) . . . . . | 1 1   |
| 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                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |       |

| Modifications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Class |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 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 . . . . .                                                                                                                                                                                                                                                                                                                      | 1 1   |
| 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) . . . . . | 1 1   |
| 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 practic-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |       |

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### NATURAL RESOURCE CONSERVATION COMMISSION

| Modifications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Class | Modifications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Class |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| es, 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                                                                                                                                                                                                                                                                                                                                                                                                                                  |       | increasing the facility's surface impoundment storage or treatment capacity.....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                                                                                                                                                                                                                                                                                                                                                                |       | 2. Replacement of a surface impoundment unit.....3                                                                                                                                                                                                                                                                                                                                                                                                                                                     |       |
| 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)....1 <sup>1</sup> |       | 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                                                                                                                                                                                                                                                                  |       |
| 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                                                                                                                                                                                                                                                                                 |       | 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                                                                                                                                                           |       |

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



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| Modifications                                                                                                                                                                                                                                            | Class |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 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     |

| Modifications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Class |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 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                                                                                                                                                                                                                                                                                                                                                                             |       |

| Modifications                                                                                                                                                                                                                                                       | Class | Modifications                                                                                                                                                                                                                                                                                                                                                                                                 | Class          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| management of newly listed or identified wastes.                                                                                                                                                                                                                    |       | tions different from permit requirements . . . . .                                                                                                                                                                                                                                                                                                                                                            | 3              |
| K. Land Treatment                                                                                                                                                                                                                                                   |       | 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              |
| 1. Lateral expansion of or other modification of a land treatment unit to increase areal extent . . . . .                                                                                                                                                           | 3     | 12. Changes in background values for hazardous constituents in soil and soil-pore liquid . . . . .                                                                                                                                                                                                                                                                                                            | 2              |
| 2. Modification of run-on control system . . . . .                                                                                                                                                                                                                  | 2     | 13. Changes in sampling, analysis, or statistical procedure . . . . .                                                                                                                                                                                                                                                                                                                                         | 2              |
| 3. Modify run-off control system . . . . .                                                                                                                                                                                                                          | 3     | 14. Changes in land treatment demonstration program prior to or during the demonstration . . . . .                                                                                                                                                                                                                                                                                                            | 2              |
| 4. Other modifications of land treatment unit component specifications or standards required in the permit . . . . .                                                                                                                                                | 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 . . .                                                                                                                                                            | 1 <sup>1</sup> |
| 5. Management of different wastes in land treatment units:                                                                                                                                                                                                          |       | 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 . . . . . | 1 <sup>1</sup> |
| a. That require a change in permit operating conditions or unit design specifications . . . . .                                                                                                                                                                     | 3     | 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              |
| b. That do not require a change in permit operating conditions or unit design specifications . . .                                                                                                                                                                  | 2     | 18. Changes in vegetative cover requirements for closure . . . . .                                                                                                                                                                                                                                                                                                                                            | 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.                                                                                 |       | L. Incinerators, Boilers and Industrial Furnaces                                                                                                                                                                                                                                                                                                                                                              |                |
| 6. Modification of a land treatment management practice to:                                                                                                                                                                                                         |       | 1. Changes to increase by more than 25% any of the following limits authorized in the permit: A ther-                                                                                                                                                                                                                                                                                                         |                |
| 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 specifica-        |       |                                                                                                                                                                                                                                                                                                                                                                                                               |                |

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| Modifications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Class |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| mal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash 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 feedstream feed rate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash 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, boiler, or industrial furnace 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 HC1/C1 <sub>2</sub> , metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace 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, boiler, or industrial furnace 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     |

| Modifications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Class |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| 5. Operating requirements:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |       |
| a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. 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 fee cutoff procedures or controls...                                                                                                                                                                                                                                                                                                                                                                                               | 3     |
| c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 2     |
| 6. Burning different wastes:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |       |
| a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning 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 burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance stan-                                                                                                                                                                                                                                                                                                                                                                                                      |       |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| <p>Modifications</p> <p>Note: See § 305.69(g) of this title (relating to Newly Regulated Wastes and Units) for modification procedures to be used for the management of newly regulated wastes and units.</p> <p>7. Shakedown and trial burn:</p> <p style="padding-left: 20px;">a. Modification of the trial burn plan 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</p> <p style="padding-left: 20px;">b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director .....1 1</p> <p style="padding-left: 20px;">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 .....1 1</p> <p style="padding-left: 20px;">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 .....1 1</p> <p>8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit.....1</p> | <p>Class</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|

**Source:** The provisions of this §305.69 adopted to be effective October 29, 1990, 15 TexReg 6015; amended to be effective July 29, 1992, 17 TexReg 5090; amended to be effective June 7, 1993, 18 TexReg 3290; amended to be effective November 23, 1993, 18 TexReg 8215.

**Cross References:** This Section cited in 30 TAC §305.62, (relating to Amendment); 30 TAC §305.64, (relating to Transfer of Permits); 30 TAC §305.102, (relating to Notice by Publication); 30 TAC §305.103, (relating to Notice by Mail); 30 TAC §305.106, (relating to Response to Comments); 30 TAC §305.144, (relating to Certification and Inspection); 30 TAC §305.171, (relating to Determining Operational Readiness); 30 TAC §305.172, (relating to Determining Feasibility of Compliance and Adequate Operating Conditions); 30 TAC §305.184, (relating to Permit Amendment or Modification).

## § 305.70. Municipal Solid Waste Class I Modifications

(a) A permittee may put into effect a Class I modification to a municipal solid waste (MSW) permit provided that the permittee has received prior written authorization for such Class I modification from the executive director. In order to receive prior written authorization, the permittee must submit a modification request to the executive director specifying the changes to be made to permit conditions or to supporting documents referenced by the permit, and explaining in detail why such changes are necessary. The permittee must submit two copies of the modification request in accordance with §305.44 of this title (relating to Signatories to Applications). Failure to submit the modification request with complete information shall constitute grounds for returning the request to the permittee without further action.

(b) The permittee must send 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) if the Class I permit modification identified in subsection (g) of this section is marked by a superscript 1. This notification must be made no later than 30 calendar days after the executive director acts upon the request. If the permittee fails to give notice as required, approval of the modification request is automatically revoked.

(c) No later than 60 calendar days after receipt of the modification request, the executive director must:

- (1) approve the modification request, with or without changes, and modify the permit accordingly;
- (2) deny the request;
- (3) request additional information concerning the request from the permittee; or
- (4) determine that the modification request does not qualify as a Class I permit modification, and that the requested change requires a permit amendment pursuant to §305.62 of this title (relating to Amendment).

(d) If a request for a Class I permit modification is denied by the executive director, the permittee must comply with the original permit conditions. Any change in a term, condition, or provision of an MSW permit that is not authorized by the executive director as a Class I permit modification requires a permit amendment pursuant to §305.62 of this title (relating to Amendment).

(e) If after 60 days from receipt of a modification request that is specifically identified in subsection (g) of this section, the executive director fails to approve or deny the request or to notify the permittee that the requested modification requires a permit amendment pursuant to §305.62 of this title (relating to Amendment), the modification request shall be automatically approved. The executive director may extend this 60-day time period if necessary to review additional information submitted pursuant to subsection (c)(3) of this section. The length of the extension shall be equivalent to the amount of time necessary to review the additional information.

(f) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods set out in subsections (c) and (e) of this section.

(g) The following is a list of possible Class I modifications to an MSW permit:

- (1) a change in the sequence of landfill development;
- (2) a change in the size and/or shape of a trench to obtain a 3:1 side slope, as long as there is no increase in capacity;
- (3) replacement of existing monitor wells that have been damaged or rendered inoperable, with no change to design or depth of the wells and a change in location of up to 20 feet horizontally;
- (4) changes in the location of marker systems (i.e., grid markers);
- (5) improvements to a fire protection plan;
- (6) changes to interior road location in order to prevent traffic through the disposal area;
- (7) changes in interior road design and construction materials;
- (8) increases in sampling frequency (e.g., for groundwater, methane, etc.);
- (9) changes in excavation details, except for increases in depth that would change the SLQCP or increase the site life;
- (10) corrections to the metes and bounds description of the permit boundaries that do not increase the size of the facility;
- (11) upgrade of landfill liner design, installation, or quality control testing to reflect the requirements of revised regulations which provide for greater environmental protection;
- (12) installation of a leachate collection system;

(13) installation of a methane gas monitoring system;

(14) installation of a methane gas collection system or the installation of additional collection wells to an existing gas collection system;

(15) changes in closure or post-closure care requirements to reflect the requirements of revised regulations which provide for increased environmental protection;

(16) the use of alternate daily cover on a trial basis not to exceed six months with one six-month extension allowable;

(17) changes regarding the use of alternate windblown waste control methods;

(18) substitution of an equivalent financial assurance mechanism;

(19) temporary changes in operating hours to address natural-disaster situations or to accommodate special community events;

(20) changes in the drainage control plan that improve internal stormwater runoff/runoff handling without impacting offsite drainage;

(21) changes in the entry gate location or site layout that relocate gatehouse, office, or maintenance building locations, or add scales to the facility, so long as the changes do not alter access traffic patterns delineated in the site development plan and/or the permit;

(22) changes to a site layout plan that add or delete a properly registered or exempted MSW facility—a used or scrap tire collection area, a recycling collection area, a sludge/grease/grit trap processing or stabilization facility, a petroleum contaminated soil stabilization area, a registered transfer station, a citizens' collection area, a pesticide container collection area, a composting operation, or other activity properly registered with the commission;

(23) subject to the limitation under subsection (h) of this section, an increase in landfill height that meets one of the following conditions:

(A) the entire facility or a portion of the facility either ceases the receipt of solid waste within 365 days of executive director approval of the height increase and initiates formal closure of the entire facility or a portion of the facility, or has formally closed the facility or a portion of the facility; or

(B) the facility has submitted a request for a major permit amendment pursuant to §305.62(c)(1) of this title (relating to Amend-

ments) to increase the height of the landfill; or

(C) the height increase is requested solely for the purpose of improving drainage from the filled area, and:

(i) the waste disposal area is not expanded into the limits of the buffer zone or within easements that exist; and

(ii) final contour elevations, including final cover, are no greater than 10 feet above the maximum final contour elevation of the contiguous landfilled area or phase of landfill development;

(24) a modification in the operation of a landfill that will change the incoming waste stream from a more restrictive waste stream to a less restrictive waste stream, i.e., a change from a Type I, II, or III landfill operation to a Type IV landfill operation may be granted, provided that the receipt of waste under the present operation has ceased and that the following conditions shall be satisfied.

(A) Permanent closure of the filled portion of the landfill shall be initiated in accordance with the regulations for closure of municipal solid waste landfills. Completion may occur after the approval of the request to change the site operation.

(B) The permittee shall provide a public notice of the proposed action to the general public by publishing the notice, within 15 days after the request, in a newspaper with general circulation in the area in which the landfill is located, and submitting a certified copy of the notice, within 15 days after publication, to the executive director as a record of this action.

(C) The permittee shall conduct a public meeting in the local area, within 30 days after the request, to describe the proposed action to the general public and provide evidence, within 15 days after the meeting, to the executive director that the meeting was held.

(D) The permittee shall submit, for approval and with the request for a change, documents that show the appropriate modifications to the site development plan and site operating plan to reflect the proposed change in operation.

(h) Authorization to increase the height of a landfill, in accordance with subsection (g)(23) of this section, may only be granted one time as a Class I modification. Subsequent requests for an increase in height require a permit amendment.

Height increases granted under subsection (g)(23) of this section that exceed 10 feet above the approved final elevations must be justified and the request must demonstrate that an increase in the capacity or life of the site will not occur.

(i) In case of a request for a Class I modification for a change in a term, condition, or provision of an MSW permit not explicitly listed in subsection (g) of this section, the executive director shall make the determination as to whether the modification request may be processed as a Class I modification or whether the change requires a permit amendment pursuant to §305.62 of this title (relating to Amendment). In making this determination, the executive director shall consider the similarity of the requested change to those Class I modifications listed in subsection (g) of this section, as well as the following criteria.

(1) Class I modifications apply to minor changes to the facility or its operation that are routine in nature.

(2) Class I modifications do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

(j) A temporary authorization may be granted by the executive director for a term of not more than 180 days for activities or events that will prevent disruption of solid waste management activities. The permittee must request a temporary authorization and must include in the request a specific description of the activities to be conducted and an explanation of why the temporary authorization is necessary, reasonable, and unavoidable. A temporary authorization may be reissued for an additional term of 180 days if the circumstances warrant additional time or if the permittee has applied for an amendment or modification to the permit.

**Source:** The provisions of this §305.70 adopted to be effective June 7, 1993, 18 TexReg 3290.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §330.1, (relating to Declaration and Intent); 30 TAC §330.4, (relating to Permit Required); 30 TAC §330.15, (relating to Effective Date); 30 TAC §330.64, (relating to Additional Standard Permit Conditions for Municipal Solid Waste Facilities); 30 TAC §330.118, (relating to Hours of Operation); 30 TAC §330.133, (relating to Landfill Cover).

## SUBCHAPTER E. ACTIONS, NOTICE, AND HEARING

**Cross References:** This Subchapter cited in 30 TAC §312.10, (relating to Permit and Registration Applications Processing).

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## 30 TAC § 305.95

### § 305.91. Applicability

This subchapter sets forth the manner in which action will be taken on applications filed with the commission.

**Source:** The provisions of this §305.91 adopted to be effective June 19, 1986, 11 TexReg 2596.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas).

### § 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.

**Source:** The provisions of this §305.92 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

### § 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, Texas Health and Safety Code, Chapter 361.

(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.

**Source:** The provisions of this §305.93 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.95, (relating to Action on Application for Renewal); 30 TAC §305.96, (relating to Action on Application for Amendment or Modification); 30 TAC §305.103, (relating to Notice by Mail); 30 TAC §305.106, (relating to Response to Comments); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

### § 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.

**Source:** The provisions of this §305.94 adopted to be effective June 19, 1986, 11 TexReg 2596.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas).

### § 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 Application for Permit).

(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 hear-



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ing, 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.

**Source:** The provisions of this §305.95 adopted to be effective June 19, 1986, 11 TexReg 2596.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

### § 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.

(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 of this title (relating to Notice by Mail) 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.

**Source:** The provisions of this §305.96 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.63, (relating to Renewal); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.184, (relating to Permit Amendment or Modification); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

### § 305.97. Action on Application for Transfer

The commission may approve a transfer by order at a regular meeting of the commission.

**Source:** The provisions of this §305.97 adopted to be effective June 19, 1986, 11 TexReg 2596.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.125, (relating to Standard Permit Conditions); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

### § 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.

**Source:** The provisions of this §305.98 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

### § 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, Texas

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Health and Safety Code, Chapter 361, 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, Texas Health and Safety Code, 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:

- (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.

**Source:** The provisions of this §305.99 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

### § 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 the Clean Water Act, §316(a), 40 Code of Federal Regulations (CFR), Part 124, Subpart D, §124.57(a), Public Notice, which are 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 Avenue, Austin.

**Source:** The provisions of this §305.100 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing); 30 TAC §330.61, (relating to Land-Use Public Hearing).

### § 305.101. Notice of Hearing

(a) 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.

(b) For applications involving solid waste management facilities under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon's Supplement 1991), the notice of hearing shall include the requirements of §305.103(c) and (f) of this title (relating to Notice by Mail).

(c) For applications involving hazardous solid waste facilities under the Act, the notice of hearing 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.

(d) For an application involving hazardous solid waste management facilities, the notice of hearing shall include the statement that at least one session of the hearing will be held in the county in which the facility is located. The notice for a hearing

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session concerning a hazardous industrial solid waste facility shall be provided in accordance with §305.107 of this title (relating to Public Meeting and Notice Requirements).

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

**Source:** The provisions of this §305.101 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 7, 1991, 16 TexReg 6051.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.107, (relating to Public Meeting and Notice Requirements); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

### § 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 (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 must reimburse

the commission for the cost of publication within 30 days of publication.

(e) Applications for a new hazardous waste management facility permit are additionally subject to the provisions of §305.107 of this title (relating to Public Meeting and Notice Requirements).

**Source:** The provisions of this §305.102 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective November 7, 1991, 16 TexReg 6051.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.68, (relating to Action and Notice on Petition for Revocation or Suspension); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

### § 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 (c)(2) of this title (relating to 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;

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(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;

(12) county judges as required by §305.93(c) of this title (relating to Action on Application for Permit);

(13) for applications involving new solid waste management facilities, in accordance with subsection (f) of this section where any duplication of effort between subsections (a) and (f) of this section exists.

(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.

(f) For applications involving new solid waste management facilities, the applicant shall mail the notice of hearing to each residential or business address located within ½ mile of the new solid waste management facility and to each owner of real property located within ½ mile of such facility listed in the real property appraisal records of the appraisal district in which the facility is sought to be permitted as of the date the commission determines the permit application to be administratively complete. Such notice must be sent by mail and must be deposited with the United States Postal Service not more than 45 days or less than 30 days before the date of the hearing.

(g) For mailings required under subsection (f) of this section, the applicant must certify to the commission that the mailings were deposited as required by subsection (f) of this section. Acceptance of the certification creates a rebuttable presumption that the applicant has complied with the requirements of subsection (f) of this section.

**Source:** The provisions of this §305.103 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective November 7, 1991, 16 TexReg 6051.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.2, (relating to Definitions); 30 TAC §305.68, (relating to Action and Notice on Petition for Revocation or Suspension); 30

TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.70, (relating to Municipal Solid Waste Class I Modifications); 30 TAC §305.96, (relating to Action on Application for Amendment or Modification); 30 TAC §305.101, (relating to Notice of Hearing); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing); 30 TAC §335.224, (relating to Additional Interim Status Standards for Burners).

### § 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, Chapter 361, 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 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.

**Source:** The provisions of this §305.104 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.68, (relating to Action and Notice on Petition for Revocation or Suspension); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas).

### § 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

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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.

**Source:** The provisions of this §305.105 adopted to be effective June 19, 1986, 11 TexReg 2596; amended to be effective April 8, 1987, 12 TexReg 998; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §281.17, (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); 30 TAC §281.21, (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary); 30 TAC §281.23, (relating to Application Amendment); 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.106, (relating to Response to Comments); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §311.54, (relating to Existing Facilities in Water Quality Areas); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and 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 Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. 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 examiners's proposal for decision is issued, the response to comments may be incorporated into the proposal for decision.

**Source:** The provision of this §305.106 adopted to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §312.13, (relating to Actions, Notice, Public Meetings, and Hearing).

## § 305.107. Public Meeting and Notice Requirements

(a) When public meeting is required.

(1) The commission shall hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located.

(2) The commission, upon request of a person affected or as otherwise required by commission rule, shall hold a public meeting on an application for a Class 3 modification or on a major amendment to an existing facility's hazardous waste permit.

(3) A public meeting held as part of a local review process pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.063 (Vernon's Supplement 1991) meets the requirement of paragraphs (1) and (2) of this subsection if notice is provided as required by subsection (c) of this section.

(b) Public meeting not a contested case hearing. A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a (Supplement 1991).

(c) Notice requirements. If a public meeting is required under subsection (a) of this section or for applications involving hazardous waste under the Act and which are subject to the requirements of §305.101 of this title (relating to Notice of Hearing), then the applicant shall, not less than once each week during the three weeks preceding a public meeting, publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed

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facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide an affidavit to the commission which certifies that notice was provided as required by this section. Acceptance of such an affidavit by the commission shall create a rebuttable presumption that the applicant has complied with this section.

(1) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

- (A) the permit application number;
- (B) the applicant's name;
- (C) the proposed location of the facility; and
- (D) the location and availability of copies of the permit application.

(2) The applicant must pay the costs of the required notice.

**Source:** The provisions of this §305.107 adopted to be effective November 7, 1991, 16 TexReg 6051.

**Cross References:** This Section cited in 30 TAC §305.101, (relating to Notice of Hearing); 30 TAC §305.102, (relating to Notice by Publication); 30 TAC §330.236, (relating to Assessment of Corrective Measures).

## SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

### § 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.

**Source:** The provisions of this §305.121 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.151, (relating to Applicability).

### § 305.122. Characteristics of Permits

(a) Compliance with a Resource Conservation and Recovery Act (RCRA) permit during its term constitutes compliance, for purposes of enforcement, with Subtitle C of RCRA except for those requirements not included in the permit which:

- (1) become effective by statute;
- (2) are promulgated under Title 40 Code of Federal Regulations Part 268 restricting the placement of hazardous wastes in or on the land; or

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(3) are promulgated under Title 40 Code of Federal Regulations Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response through the Class 1 permit modifications procedures of Title 40 Code of Federal Regulations §270.42 (concerning permit modification at the request of the permittee).

(b) 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.

(c) 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.

(d) 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 Permit Denial, Revocation, and Suspension).

**Source:** The provisions of this §305.122 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 23, 1993, 18 TexReg 8215.

**Cross References:** This Section cited in 30 TAC §305.151, (relating to Applicability); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).

### § 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 any 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.

**Source:** The provisions of this §305.123 adopted to be effective June 19, 1986, 11 TexReg 2597.

**Cross References:** This Section cited in 30 TAC §305.151, (relating to Applicability); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).



**§ 305.124. Acceptance of Permit, Effect**

Acceptance of the permit by the person to whom it is issued constitutes an acknowledgment 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.

**Source:** The provisions of this §305.124 adopted to be effective June 19, 1986, 11 TexReg 2597.

**Cross References:** This Section cited in 30 TAC §305.151, (relating to Applicability); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).

**§ 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 disposal elimination system (TPDES) permits the Clean Water Act (CWA), and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or 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 the Texas Water Code, §26.014, that commission entry of a facility shall occur in accordance with an establishment's rules and



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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 (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 the 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 be 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 monitoring reports or reports of compliance or noncompliance.

Source: The provisions of this §305.125 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3513; amended to be effective October 8, 1990, 15 TexReg 5492.

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**Cross References:** This Section cited in 30 TAC §305.126, (relating to Additional Standard Permit Conditions for Waste Discharge Permits); 30 TAC §305.145, (relating to Release or Discharges of Solid Waste); 30 TAC §305.151, (relating to Applicability); 30 TAC §305.535, (relating to Bypasses from TPDES Permitted Facilities); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a Permit); 30 TAC §337.6, (relating to Force Majeure).

### § 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% 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% 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 (e.g., 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 ad-

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ditional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(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.

**Source:** The provisions of this §305.126 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective June 25, 1990, 15 TexReg 3416; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.48, (relating to Additional Contents of Applications for Wastewater Discharge Permits); 30 TAC §305.151, (relating to Applicability); 30 TAC §312.11, (relating to Permits).

### § 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 10 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 10 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 authorized by Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(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, 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.

**Source:** The provisions of this §305.127 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.50, (relating to Additional Requirements for an Application for a Solid Waste Permit); 30 TAC §305.62, (relating to Amendment); 30 TAC §305.141, (relating to Applicability); 30 TAC §305.151, (relating to Applicability); 30 TAC §312.11, (relating to Permits); 30 TAC §321.34, (relating to Procedure for Making Application for a 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)

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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).

**Source:** The provisions of this §305.128 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.125, (relating to Standard Permit Conditions); 30 TAC §305.151, (relating to Applicability); 30 TAC §305.172, (relating to Determining Feasibility of Compliance and Adequate Operating Conditions); 30 TAC §305.183, (relating to Certification); 30 TAC §305.401, (relating to Compliance Plan); 30 TAC §312.11, (relating to Permits).

### § 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 National Pollutant Discharge Elimination System (NPDES) Program Requirements, §122.21(m), providing requirements for variance requests by nonpublicly owned treatment works;

(2) Part 122, Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(n), providing requirements for various

requests by publicly owned treatment works (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;

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

**Source:** The provisions of this §305.129 adopted to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §312.11, (relating to Permits).

## SUBCHAPTER G. ADDITIONAL CONDITIONS FOR SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS

### § 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).

**Source:** The provisions of this §305.141 adopted to be effective June 19, 1986, 11 TexReg 2597.

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### § 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.

**Source:** The provisions of this §305.142 adopted to be effective June 19, 1986, 11 TexReg 2597.

### § 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.

**Source:** The provisions of this §305.143 adopted to be effective June 19, 1986, 11 TexReg 2597.

### § 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.

**Source:** The provisions of this §305.144 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 29, 1990, 15 TexReg 6015.

### § 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:

(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.

**Source:** The provisions of this §305.145 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective April 8, 1987, 12 TexReg 998.

### § 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 nonhazardous solid waste);

(2) waste report required by §335.15(c) of this title (relating to Recordkeeping 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 nonhazardous 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 title (relating to Annual Reporting); an annual report must be submitted covering facility activities during the previous calendar year;

(4) monthly summary required by §335.15(b) of this title (relating to Recordkeeping 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 nonhazardous industrial solid waste).

Source: The provisions of this §305.146 adopted to be effective June 19, 1986, 11 TexReg 2597.

### § 305.147. Monitoring of Commercial Hazardous Waste Management Facility Operations

Any issued, amended, modified, transferred, extended, or renewed commercial hazardous waste management facility permit shall include the following requirements.

(1) Within the first year after commission action on the permit the facility owner or operator shall provide notice to affected persons of intent to have an independent annual environmental audit of the facility performed. The notice shall be issued in accordance with the following procedure.

(A) The notice shall state the names of at least three independent inspectors nominated by the facility owner or operator to perform the environmental audit and shall be published in the newspaper of the largest general circulation that is published in the county in which the facility is located and all adjacent counties or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The facility owner or operator shall not

nominate an inspector who is employed or who has been employed by the facility.

(B) The notice shall announce a meeting time and place, to be located near the facility location, be held within 15 days of the published notice in order for the facility to receive comments from and allow for participation by interested affected persons in the selection of the independent inspector. The interested affected persons may either agree to one of the nominated independent inspectors or nominate other independent inspectors if they do not approve of the nominee list. The selection of the independent inspector shall be agreed to by the facility owner or operator and the interested affected persons no later than 30 days from the date of the meeting. The name of the selected independent inspector shall be submitted to the commission no later than 15 days from the date of selection for the commission's approval. The commission shall approve the independent inspector after it has determined that the independent inspector has the necessary expertise to perform the audit and does not have a conflict of interest with any of the parties involved in the inspector selection.

(C) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

- (i) the facility owner's or operator's name;
- (ii) the location of the facility;
- (iii) the facility permit number;
- (iv) the time and date of the scheduled annual environmental audit;
- (v) the names of at least three nominated independent inspectors;
- (vi) the date and time and location of the selection meeting; and
- (vii) the name and telephone number of a facility contact person.

(D) The facility owner or operator shall provide a copy of the published notice to local jurisdictions where the facility is located.

(E) The facility owner or operator shall provide the commission with an affidavit including a newspaper tear sheet of the published notice and sworn statement of the editor or publisher certifying that the notice was given as required by this section. Acceptance of the



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affidavit creates a rebuttable presumption that the applicant has complied with this section.

(2) If the facility owner or operator and interested affected persons cannot agree on the selection of an independent inspector within the time frame specified in paragraph (1)(B) of this section, the commission shall select an independent inspector. The commission's selection, however, shall not be limited to either the facility owner or operator's nominee list or the interested affected persons' nominee list. The commission shall take steps necessary to assure that the independent inspector or entity selected to perform the audit has the necessary expertise to perform the audit, is not a business competitor of the facility, and does not have a conflict of interest with any of the parties involved in the inspector selection.

(3) The facility owner or operator shall pay the cost of notice required to be provided under this section.

(4) The facility owner or operator shall be responsible for the costs of an independent annual environmental audit. The facility owner or operator shall also maintain responsibility for procuring the selected independent inspector. The commission shall not be a party to such procurement nor warrant the workmanship of the selected inspector.

(5) The facility owner or operator shall submit the results of an independent annual environmental audit in writing to the executive director and must mail a copy of the audit to those affected persons who participated in the selection of the independent inspector.

(6) The scope of the independent annual environmental audit may encompass any and all provisions of environmental permits required for the facility and all relevant statutes and regulations regarding the management of the facility.

(7) The facility is not required to perform the annual independent environmental audit if the facility does not receive any comments from affected persons. If the facility performs the independent audit despite lack of response, the facility must obtain the commission's approval of the selected independent inspector prior to the audit.

(8) The facility shall provide for fence line and ambient air quality monitoring if and as required by the commission.

**Source:** The provisions of this §305.147 adopted to be effective November 7, 1991, 16 TexReg 6051.

### § 305.148. Impact of New Hazardous Waste Management Facilities on Local Land Use

Based on its assessment of an application for a new hazardous waste management facility permit, in accordance with §335.180 of this title (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use), the commission may impose permit conditions deemed to be necessary to minimize or mitigate detrimental impacts on local land use.

**Source:** The provisions of this §305.148 adopted to be effective November 7, 1991, 16 TexReg 6051.

**Cross References:** This Section cited in 30 TAC §335.180, (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use).

### SUBCHAPTER H. ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS

### § 305.151. Applicability

Unless stated otherwise, the following conditions apply to all Class I and Class III injection well permits and shall be incorporated into the permit expressly or by reference. The commission may require such conditions for Class V injection well permits as are necessary to prevent pollution of fresh water. These conditions are in addition to those set forth in §§305.121-305.128 of this title (relating to Permit Characteristics and Conditions).

**Source:** The provisions of this §305.151 adopted to be effective June 19, 1986, 11 TexReg 2598.

### § 305.152. Corrective Action

(a) For such wells within the area of review which are inadequately constructed, completed, or abandoned, and which as a result of the injection activities may cause the pollution of fresh water, the commission shall prescribe or incorporate into the permit a condition requiring corrective action adequate to prevent such pollution. Corrective action will be required unless the owner or operator demonstrates to the executive director that, despite the owner or operator's best efforts, he is unable to obtain the necessary permission to undertake such action.

(b) The criteria of §331.44 of this title (relating to Corrective Action Standards) will be used to determine adequacy.

(c) A permit issued for an existing injection well requiring corrective action may include a compli-

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ance schedule prescribing the time within which the corrective action must be completed.

(d) As part of the corrective action plan, the commission may impose an injection pressure limitation that does not cause the pressure in the injection zone to exceed hydrostatic pressure in those wells described in subsection (a) of this section, which condition shall expire upon adequate completion of all corrective action measures.

(e) Action prescribed by a corrective action plan for new wells or new areas must be completed to the satisfaction of the executive director before operation of the well begins.

(f) In the event that, after an authorization for injection has been granted, additional information is submitted or discovered that a well within the applicable area of review might pose a hazard to a freshwater aquifer, the commission may prescribe a corrective action plan and compliance schedule as a condition for continued injection activities.

**Source:** The provisions of this §305.152 adopted to be effective June 19, 1986, 11 TexReg 2598.

### § 305.154. Standards

Although the commission may impose stricter standards where appropriate, at a minimum, the permittee shall comply with the standards prescribed by Chapter 331 of this title (relating to Underground Injection Control), and the sections referenced herein.

(1) Construction requirements. Section 331.62 and §331.82 of this title (relating to Construction Standards; Construction Requirements).

(2) Compliance schedule. The commission may establish a compliance schedule for existing wells to achieve compliance with the requirements of this section.

(3) Construction plans. Changes in construction plans shall be approved by certification under §331.45 of this title (relating to Certification of Construction and Completion), or, if required, by permit amendment before such changes may be physically incorporated into construction of the well.

(4) Commencing operations. Commencement of injection operations prior to certification by the executive director that construction and completion are compliant shall constitute a violation of the permit and may be considered grounds for revocation or suspension of the permit, as well as for enforcement action.

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(5) Operating requirements. Section 331.63 of this title (relating to Operating Requirements) and §331.83 of this title (relating to Operating Requirements).

(6) Monitoring and reporting. Section 331.64 and §331.65 of this title (relating to Monitoring Requirements; Reporting Requirements), §331.84 and §331.85 of this title (relating to Monitoring Requirements; Reporting Requirements); or §§331.101-331.107 of this title (relating to Standards for Class III Well Production Area Development).

(7) Plugging. The permittee shall notify the executive director and obtain approval before plugging an injection well.

(8) Plugging and abandonment requirements. The permittee shall notify the executive director and obtain approval before plugging an injection well. Section 331.46 of this title (relating to Plugging and Abandonment Standards).

(9) Correction action requirements. Section 331.44 of this title (relating to Corrective Action Standards).

(10) Post-closure requirements. Section 331.68 of this title (relating to Post-Closure Standards).

**Source:** The provisions of this §305.154 adopted to be effective June 19, 1986, 11 TexReg 2598; amended to be effective July 5, 1989, 14 TexReg 3046.

### § 305.155. Production Area Authorization

A production area authorization shall include for each production area:

- (1) a mine plan;
- (2) a restoration table;
- (3) a baseline water quality table;
- (4) control parameters upper limits;
- (5) monitor well locations; and
- (6) any special provisions determined appropriate by the commission.

**Source:** The provisions of this §305.155 adopted to be effective June 19, 1986, 11 TexReg 2598.

### § 305.156. Hazardous Waste

For a hazardous waste disposal well, the surface facilities shall comply with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). The surface facilities for an injection well which disposes of hazardous waste are hazardous waste management facilities.

**Source:** The provisions of this §305.156 adopted to be effective June 19, 1986, 11 TexReg 2598.

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**Cross References:** This Section cited in 30 TAC §331.9, (relating to Injection Authorized by Rule).

### § 305.157. Record Retention

The permittee shall retain all records concerning the nature and composition of injected fluids until five years after completion of plugging and abandonment procedures for the well. The executive director may require a permittee to submit copies of the records at any time prior to conclusion of the retention period.

**Source:** The provisions of this §305.157 adopted to be effective June-19, 1986, 11 TexReg 2598.

### § 305.158. Additional Conditions

The commission shall impose any other condition necessary to prevent the pollution of fresh water.

**Source:** The provisions of this §305.158 adopted to be effective June 19, 1986, 11 TexReg 2598.

### § 305.159. Additional Class I Conditions

A permit for a Class I well shall include expressly or by reference the following conditions.

(1) A sign shall be posted at the well site which shall show the name of the company, company well number and commission permit number. The sign and identification shall be in the English language, clearly legible, and shall be in numbers and letters at least one inch high.

(2) An all-weather road shall be installed and maintained to allow access to the injection well and related facilities.

(3) The wellhead and associated facilities shall be painted, if appropriate, and maintained in good working order without leaks.

**Source:** The provisions of this §305.159 adopted to be effective June 19, 1986, 11 TexReg 2598.

## SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

### § 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 mini-

mum 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 of this title (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.

**Source:** The provisions of this §305.171 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

### § 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:

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(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 (O<sub>2</sub>), 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 (four 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 para-

graph (6) of this section. This submission shall be made within 90 days of completion of the trial burn, or later with the prior approval 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).

**Source:** The provisions of this §305.172 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee); 30 TAC §305.174, (relating to Existing Incinerators).

### § 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

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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.

**Source:** The provisions of this §305.173 adopted to be effective June 19, 1986, 11 TexReg 2600.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

### § 305.174. Existing Incinerators

For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 and of determining adequate operating conditions under 40 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.

## 30 TAC § 305.182

**Source:** The provisions of this §305.174 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

## SUBCHAPTER J. PERMITS FOR LAND TREATMENT DEMONSTRATIONS USING FIELD TESTS OR LABORATORY ANALYSES

### § 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.

**Source:** The provisions of this §305.181 adopted to be effective June 19, 1986, 11 TexReg 2600.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

### § 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 di-

### 30 TAC § 305.182

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mensions 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).

**Source:** The provisions of this §305.182 adopted to be effective June 19, 1986, 11 TexReg 2600.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

### § 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 §305.44 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.

**Source:** The provisions of this §305.183 adopted to be effective June 19, 1986, 11 TexReg 2600.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

### § 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.

(2) If not amendments of the second phase of the permit are not 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.

**Source:** The provisions of this §305.184 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

**Cross References:** This Section cited in 30 TAC §305.69, (relating to Solid Waste Permit Modification at the Request of the Permittee).

### SUBCHAPTER K. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS

**Cross References:** This Subchapter cited in 30 TAC §335.1, (relating to Definitions).

### § 305.191. Applicability and Scope

The commission may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 40 Code of Federal Regulations Parts 264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health or safety and the environment. Such permits:

(1) shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless re-



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newed as provided in §305.194 of this title (relating to Renewal);

(2) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the commission deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and safety and the environment; and

(3) shall include such requirements as the commission deems necessary to protect human health and safety and the environment, including, but not limited to, requirements regarding monitoring, operation, financial responsibility closure, and remedial action, and such other requirements as the commission deems necessary regarding testing with respect to the operation of the facility and providing of information to the executive director.

**Source:** The provisions of this §305.191 adopted to be effective June 19, 1986, 11 TexReg 2601.

### § 305.192. Waiver of Requirements

For the purpose of expediting review and issuance of permits under this subchapter, the commission may, consistent with the protection of human health and safety and the environment, modify or waive permit application and permit issuance requirements of this chapter, except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

**Source:** The provisions of this §305.192 adopted to be effective June 19, 1986, 11 TexReg 2601; amended to be effective August 30, 1988, 13 TexReg 4071.

### § 305.193. Termination

The commission may order an immediate termination of all operations at a facility subject to this subchapter at any time the commission determines that termination is necessary to protect human health and safety and the environment.

**Source:** The provisions of this §305.193 adopted to be effective June 19, 1986, 11 TexReg 2601.

### § 305.194. Renewal

Any permit issued under this subchapter may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

**Source:** The provisions of this §305.194 adopted to be effective June 19, 1986, 11 TexReg 2601.

## 30 TAC § 305.401

**Cross References:** This Section cited in 30 TAC §305.191, (relating to Applicability and Scope).

### SUBCHAPTER L. GROUNDWATER COMPLIANCE PLAN

#### § 305.401. Compliance Plan

(a) In order to administer the groundwater protection requirements relating to compliance monitoring and corrective action for facilities that store, process, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills, and the requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), the commission shall establish a compliance plan.

(b) The following rules pertaining to application and notice an hearing shall be applicable in proceedings to establish the plan: Chapter 281 of this title (relating to Applications Processing), §305.44 of this title (relating to Signatories to Applications), §305.47 of this title (relating to Retention of Application Data), §305.43 of this title (relating to Who Applies), §305.53 of this title (relating to Application Fees), §305.50 of this title (relating to Additional Requirements for an Application for a Solid Waste Permit), §305.92 of this title (relating to Action on Applications), § 305.93 of this title (relating to Action on Application for Permits), §305. 96 of this title (relating to Action on Application for Amendment), §§ 305.98-305.105 of this title (relating to Scope of Proceedings; Commission Action; Notice of Commission Consideration of Application; Notice of Hearing; Notice by Publication; Notice by Mail; Radio Broadcasts; and Request for Public Hearing), §§305.122-305.124 of this title (relating to Characteristics of Permits; Reservation in Granting Permit; and Acceptance of Permit, Effect); and §305.128 of this title (relating to Signatories to Reports).

(c) Any investigation report to establish compliance monitoring or corrective action shall contain the information specified in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(7) and (8), which are in effect as of September 9, 1987. The executive director may authorize, in writing, in advance the submittal of a proposed permit schedule for the submittal of an engineering feasibility plan as set forth in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(7), which are in effect as of September 9, 1987. The executive director may also authorize, in writing, prior to the submittal of a

complete permit application, the submittal of a schedule for the information required in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(8)(iii) and (iv), as set forth in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(8)(v), which are in effect as of September 9, 1987. The executive director may request information necessary to determine the appropriateness and extent of corrective action required by §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

(d) The executive director shall prepare a draft compliance plan unless the executive director recommends not to approve the plan. The draft compliance plan shall be available for public review, and notice that the executive director has prepared such a plan will be given pursuant to §305.100 of this title (relating to Notice of Application). The draft compliance plan shall be filed with the commission to be included in its consideration of the approval of a compliance plan.

(e) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft compliance plan. The executive director shall send this summary together with the draft compliance plan to the applicant and, on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft compliance plan;

(2) the type and quantity of wastes, fluids, or pollutants which are being managed at the facility;

(3) a brief summary of the basis for the conditions of the draft compliance plan, including references to applicable statutory or regulatory provisions;

(4) a description of the procedures for reaching a final decision on the draft compliance plan, including procedures whereby the public may participate in the final decision; and

(5) the name and telephone number of a person in the commission to contact for additional information.

(f) The plan may be amended:

(1) when the corrective action program specified in the plan under §335.165 of this title (relating to Compliance Monitoring Program) has not brought the regulated unit into compli-

ance with the groundwater protection standard within a reasonable time;

(2) When the plan requires a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program), but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard. The sections of this chapter pertaining to major amendments shall be applicable to the foregoing amendments to the compliance plan.

(g) Whenever a facility is subject to permitting under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is further required under §§335.156-335.167 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; Corrective Action Program; and Corrective Action for Solid Waste Management Units) to conduct compliance monitoring or corrective action, processing of the permit application for the facility and the establishment of the compliance plan shall be consolidated in one proceeding.

(h) Nothing herein shall be construed to be inconsistent with the commission's authority under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §8 and §8b.

**Source:** The provisions of this §305.401 adopted to be effective June 19, 1986, 11 TexReg 2601; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3514.

**Cross References:** This Section cited in 30 TAC §281.2, (relating to Applicability); 30 TAC §335.167, (relating to Corrective Action for Solid Waste Management Units).

## **SUBCHAPTER M. WASTE TREATMENT INSPECTION FEE PROGRAM**

### **§ 305.501. Purpose**

(a) It is the purpose of these sections to maintain the Waste Treatment Inspection Fee Program. Under this program, an annual waste treatment inspection fee is imposed on each permittee holding a permit under the Texas Water Code, Chapter 26. All fees shall be deposited in a fund for the purpose of supplementing other funds appropriated by the legislature to pay the expenses of the commission in inspecting waste treatment facilities and enforcing the provisions of the Texas Water Code, Chap-

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ter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities.

(b) Upon the delegation of national pollutant discharge elimination system (NPDES) permit authority to the commission, the fees shall be used, in addition to the purposes specified in subsection (a) of this section for obtaining and administering the Texas pollutant discharge elimination system (TPDES) program.

**Source:** The provisions of this §305.501 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective December 30, 1991, 16 TexReg 7206.

**Cross References:** This Section cited in 30 TAC §305.505, (relating to Fund).

### § 305.502. Definitions and Abbreviations

(a) Definitions. The definitions contained in the Texas Water Code, §26.001, shall apply herein. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Annual waste treatment inspection fee—A fee charged to each permittee holding a permit under the Texas Water Code, Chapter 26.

(2) Biomonitoring—The determination of total (whole-effluent) toxicity of permitted discharges as required by and consistent with the provisions of §307.1(d) of this title (relating to General Policy Statement).

(3) Commission—The Texas Water Commission.

(4) Final flow limit—The maximum amount of wastewater discharge authorized during any term of the permit, expressed as a daily average flow, a daily maximum flow, an annual average, or an annual maximum.

(5) Flow—The total by volume of all wastewater discharges authorized under a permit expressed as an average flow per day, a maximum flow per day, an annual average, or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow is based on the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow is based on the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(6) Flow volume—

(A) Type I, contaminated—These wastewaters include sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters;

(B) Type II, uncontaminated—These wastewaters are relatively uncontaminated. They include noncontact cooling water or mixed flows which contain at least 90% noncontact cooling water and not more than one million gallons per day of process wastewater.

(7) Fund—The waste treatment facility inspection fund.

(8) Heat load parameter—The temperature limitation specified in a permit. For purposes of assessing the waste treatment inspection fee, points are assigned according to the existence of a temperature limitation within a waste discharge permit.

(9) Inactive permit—A permit which authorizes a waste treatment facility, but where the facility itself is not yet operational or where operation has been suspended.

(10) Land application/evaporation permit—A permit which does not authorize the discharge of wastewaters into surface waters in the state, including, but not limited to, permits for evaporation ponds and irrigation systems.

(11) Major permit—A permit designated as a major permit, in conformance with applicable Environmental Protection Agency (EPA) guidance documents, by either EPA or the commission and subject to provisions of NPDES or TPDES permit authority, respectively.

(12) Parameter—A variable which acts as a set of physical properties whose values determine the characteristics of a waste discharge. Those parameters to be considered under the waste treatment facility inspection fee are:

(A) pollutant potential, expressed as the Standard Industrial Classification (SIC) for industrial permits and an authorized flow of greater than one million gallons per day (mgd) and/or biomonitoring requirements or toxicant numeric limits for domestic permits;

(B) flow volume;

(C) biochemical oxygen demand (BOD)/chemical oxygen demand (COD)/total organic carbon value;

(D) total suspended solids (TSS) value;

(E) ammonia value;

(F) heat load; and

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(G) major/minor designation.

(13) Payment—Receipt by the commission of the full amount of the annual waste treatment inspection fee.

(14) Permit—Any permit issued by the Texas Water Commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Health and Safety Code, Chapter 361).

(15) Pollutant potential—A rating assigned to a permit based on:

(A) for industrial permits, the source(s) of wastewater, the Standard Industrial Classification of the facility, and the specific type of operation; or

(B) for domestic permits, an authorized flow of greater than 1.0 mgd and/or the existence of biomonitoring requirements or toxic numerical discharge limits.

(16) Report discharge permit—A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported but without any limitation on the volume of discharge.

(17) Stormwater/report discharge permit—A permit which authorizes the variable or occasional discharge of accumulated stormwater and stormwater runoff, but without any specific limitation on the volume of discharge.

(18) Toxicant numerical limit—A permit discharge limit established for any toxicant identified or otherwise defined in accordance with the provisions of §307.6 of this title (relating to Toxic Materials).

(19) Traditional pollutants—The wastewater parameters typically found in wastewater discharge permits, specifically BOD/COD/TOC, TSS, and ammonia. For purposes of assessing the waste treatment inspection fee, points are assigned to these parameters if they are included in a permit.

(b) Abbreviations. The following abbreviations apply to these sections.

(1) BOD—Biochemical oxygen demand.

(2) COD—Chemical oxygen demand.

(3) mgd—Million gallons per day.

(4) mg/l—Milligrams per liter. All limits measured in mg/l are converted to pounds per day (lb/day) using the following conversion: mg/l

times flow volume in mgd times 8.34 equals lb/day.

(5) SIC—Standard Industrial Classification assigned to a facility generating wastewater.

(6) TNL—Toxicant numerical limit.

(7) TOC—Total organic carbon.

(8) TSS—Total suspended solids.

Source: The provisions of this §305.502 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective December 30, 1991, 16 TexReg 7206.

## § 305.503. Fee Assessment

(a) An annual waste treatment inspection fee is assessed against each person holding a permit issued under the authority of the Water Code, Chapter 26. The amount of the fee is determined by specific permit parameters for which a facility is authorized as of each September 1. The maximum fee which may be assessed each permit is \$11,000, except that upon delegation of national pollutant discharge elimination system (NPDES) permit authority to the commission, the maximum fee which may be assessed is \$15,000.

(b) In assessing a fee, the commission may consider the following parameters for each permit:

(1) pollutant potential;

(2) flow volume;

(3) traditional pollutants;

(4) heat load;

(5) major/minor designation;

(6) the designated uses and ranking classification of waters affected by waste discharges; and

(7) the costs of obtaining and administering the Texas pollutant discharge elimination system program, upon delegation by the Environmental Protection Agency (EPA).

(c) Except as provided in subsection (g) of this section, the commission shall assign a point value to each of the permit parameters in subsection (b) of this section. The assigned value(s) shall be weighted according to the specific permit limits and the weighted values summed. Either the sum of the variable point values under subsection (f) of this section or the set point values established under subsection (g) of this section are multiplied by the current fee rate under subsection (h) of this section to determine the fee to be assessed.

(d) For the purpose of fee calculation, COD and TOC are converted to BOD values and the higher value is assessed points. The conversion for TOC is:

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three pounds of TOC is equal to one pound of BOD (3:1). The conversion for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(e) For the purpose of fee calculation, a permit which authorizes a secondary treatment system consisting of ponds or lagoons at limits of 30 mg/l BOD and 90 mg/l TSS shall be assumed to be equivalent to 20 mg/l BOD and 20 mg/l TSS. This

equivalency is based on treatment provided by different types of secondary treatment systems.

(f) Except as provided in subsection (g) of this section, each permit shall be assessed a fee based on the specific parameters assigned to the permit and determined by the following schedule. Each permit shall be reviewed to determine the individual values for the parameters covered by this schedule.

(1) Pollutant potential.

(A) Industrial discharges.

|           |   |           |
|-----------|---|-----------|
| Group I   | = | 0 Points  |
| Group II  | = | 10 Points |
| Group III | = | 15 Points |
| Group IV  | = | 20 Points |
| Group V   | = | 30 Points |
| Group VI  | = | 40 Points |

(B) Domestic discharges

|                                                                                |   |           |
|--------------------------------------------------------------------------------|---|-----------|
| Group I (< 1.0 mgd, no biomonitoring or toxicant numerical limit)              | = | 0 Points  |
| Group II ( $\geq$ 1 mgd and/or biomonitoring, but no toxicant numerical limit) | = | 10 Points |
| Group III (toxicant numerical limit)                                           | = | 15 Points |

Pollutant Potential Points = \_\_\_\_\_

(2) Flow volume.

(A) Type I (contaminated).

|                        |   |           |
|------------------------|---|-----------|
| $\leq .05$ mgd         | = | 3 Points  |
| $> .05$ but $\leq .25$ | = | 5 Points  |
| $> .25$ but $\leq 2$   | = | 10 Points |
| $> 2$ but $\leq 4$     | = | 20 Points |
| $> 4$ but $\leq 6$     | = | 30 Points |
| $> 6$ but $\leq 8$     | = | 40 Points |
| $> 8$ but $\leq 10$    | = | 50 Points |
| $> 10$ mgd             | = | 60 Points |

(B) Type II (uncontaminated).

|                       |   |           |
|-----------------------|---|-----------|
| $\leq 1$ mgd          | = | 3 points  |
| $> 1$ but $\leq 5$    | = | 10 points |
| $> 5$ but $\leq 10$   | = | 20 points |
| $> 10$ but $\leq 50$  | = | 30 points |
| $> 50$ but $\leq 500$ | = | 40 points |
| $> 500$ mgd           | = | 50 points |

(3) Traditional pollutants.

(A) Oxygen demand. (COD and TOC limits are converted to BOD values and the higher value is used.)

|                          |   |           |
|--------------------------|---|-----------|
| $\leq 50$ lb/day         | = | 1 point   |
| $> 50$ but $\leq 100$    | = | 5 points  |
| $> 100$ but $\leq 250$   | = | 10 points |
| $> 250$ but $\leq 500$   | = | 20 points |
| $> 500$ but $\leq 750$   | = | 30 points |
| $> 750$ but $\leq 1000$  | = | 40 points |
| $> 1000$ but $\leq 3000$ | = | 60 points |
| $> 3000$ lb/day          | = | 80 points |

Oxygen Demand Points = \_\_\_\_\_

(B) Total suspended solids.

|                        |   |           |
|------------------------|---|-----------|
| $\leq 50$ lb/day       | = | 1 point   |
| $> 50$ but $\leq 100$  | = | 5 points  |
| $> 100$ but $\leq 250$ | = | 10 points |
| $> 250$ but $\leq 500$ | = | 20 points |

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|                   |   |           |
|-------------------|---|-----------|
| > 500 but ≤ 750   | = | 30 points |
| > 750 but ≤ 1000  | = | 40 points |
| > 1000 but ≤ 3000 | = | 60 points |
| > 3000 lb/day     | = | 80 points |

Total Suspended Solids Points = \_\_\_\_\_

(C) Ammonia.

|                   |   |           |
|-------------------|---|-----------|
| ≤ 250 lb/day      | = | 0 points  |
| > 250 but ≤ 500   | = | 10 points |
| > 500 but ≤ 1000  | = | 20 points |
| > 1000 but ≤ 3000 | = | 30 points |
| > 3000 lb/day     | = | 40 points |

Ammonia Points = \_\_\_\_\_

(4) Heat load.

|                                          |   |           |
|------------------------------------------|---|-----------|
| If heat loading parameter is not present | = | 0 points  |
| If heat loading parameter is present     | = | 10 points |
| Heat Load Points                         | = | _____     |

(5) Major/minor designation.

|                                            |   |           |
|--------------------------------------------|---|-----------|
| If facility is rated as EPA minor facility | = | 0 points  |
| If facility is rated as EPA major facility | = | 10 points |
| Major Facility Points                      | = | _____     |

(g) Set point permits. The following fees are assessed for permits to which the parameters under subsection (f) of this section are not applicable.

(1) Evaporation/land application permits.

Industrial Discharges = 5 points  
Domestic Discharges

<.1 mgd = 4 points  
≥.1 mgd = 10 points

(2) Stormwater/report permits = 12 points.  
Stormwater permits for which discharge parameters have been established shall be assessed a fee under subsection (f) of this section.

Set Points = \_\_\_\_\_

(h) The annual fee to be assessed is calculated by multiplying the total points determined under subsection (f) of this section and/or subsection (g) of this section by the rate of \$70 per point. Permits having both process wastewater discharges assessed under subsection (f) of this section and stormwater discharges assessed under subsection (g) of this section shall be assessed the total of the fees determined under the respective subsections, not to exceed the maximum fee under subsection (a) of this section.

(i) Until August 31, 1992, the fee assessed an inactive permit shall be 25% of that calculated

under subsection (f) and/or subsection (g) of this section. Beginning September 1, 1992, the fee assessed an inactive permit shall be 50% of that calculated under subsection (f) and/or subsection (g) of this section. In no event shall the fee for an inactive permit be less than \$100 per year.

Source: The provisions of this §305.503 adopted to be effective December 30, 1991, 16 TexReg 7206.

Cross References: This Section cited in 30 TAC §321.34, (relating to Procedure for Making Application for a Permit).

### § 305.504. Fee Payment

Annual waste treatment inspection fees are payable within 30 days of the billing date each year for all permittees. Fees shall be paid by check, certified check, or money order payable to the Texas Water Commission. New permits will require full payment of the appropriate fee within 30 days of the billing date, and thereafter will be assessed an annual waste treatment inspection fee under the schedule set forth herein, beginning with the next regular billing date. All fee assessments are to be based on the permitted parameters (interim or final) specified in the permit, without regard to the actual quality of effluent that the permitted facility is discharging. Where the parameters authorized for a permitted facility change to a higher interim level or to the final level authorized by the permit, the revised fee, if any, will be assessed at the next regular payment date following the change in authorized limits. If a permit is amended to authorize

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lesser or greater parameters, the revised fee will be assessed at the next regular payment date following the final order of the Texas Water Commission effecting the amendment. Fees are payable regardless of whether the permitted facility actually is constructed or in operation.

**Source:** The provisions of this §305.504 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective December 30, 1991, 16 TexReg 7206.

### § 305.505. Fund

All fees collected under this waste treatment inspection fee program are to be deposited in the waste treatment facility inspection fund. The fund shall be managed in accordance with §305.501 of this title (relating to Purpose).

**Source:** The provisions of this §305.505 adopted to be effective April 27, 1988, 13 TexReg 1775.

### § 305.506. Cancellation, Revocation, and Transfer

Cancellation or revocation of a permit, whether by voluntary action on the part of the permittee or as a result of involuntary proceedings initiated by the commission, will not constitute grounds for a refund, in whole or in part, of any annual inspection fee already paid by the permittee. Transfer of a permit will not entitle the transferor permittee to a refund, in whole or in part, of any annual inspection fee already paid by that permittee. Any permittee to whom a permit is transferred shall be liable for payment of the annual inspection fee assess for the permitted facility on the same basis as the transferor of the permit.

**Source:** The provisions of this §305.506 adopted to be effective April 27, 1988, 13 TexReg 1775.

## SUBCHAPTER N. MEMORANDUM OF UNDERSTANDING

**Authority:** The provisions of this Subchapter N issued under the Texas Water Code, §5.104.

### § 305.521. Adoption of Memoranda of Understanding by Reference

The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Water Commission, Legal Division, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069:

(1) the memorandum of understanding (effective April 1, 1989) between the Texas Department of Health, the Texas Air Control Board, and the Texas Water Commission, which concerns the regulation and management of municipal sewage sludge;

(2) the memorandum of understanding between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of nonhazardous wastewater that contains radioactive constituents; and

(3) the memorandum of understanding (effective February 1992) between the Texas Department of Transportation and the Texas Water Commission, which concerns primarily the assessment of water quality impacts resulting from certain transportation projects.

**Source:** The provisions of this §305.521 adopted to be effective July 3, 1989, 14 TexReg 3008; amended to be effective December 24, 1992, 17 TexReg 8735.

## SUBCHAPTER O. ADDITIONAL CONDITIONS AND PROCEDURES FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS

### § 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 D, 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) §122.41(a)(1)—Conditions applicable to all permits. Section 122.41(a)(1) relates to the duty of a permittee to comply with standards or prohibitions for toxic pollutants and sewage sludge use and disposal established under Clean Water Act (CWA), §307(a) and §405(d).

(2) §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).

(3) §122.43(a) and (b)—Establishing permit conditions. Section 122.43 relates to conditions



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assuring compliance with all applicable requirements of the CWA and regulations.

(4) §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, 24-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.

(5) §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 in intake water, internal waste streams, and disposal of pollutants into wells, into POTWs, or by land application.

(6) §122.50—Disposal of pollutants into wells, into POTWs, or by land application.

(7) §124.59—Conditions requested by the United States Army Corps of Engineers and other government agencies.

Source: The provisions of this §305.531 adopted to be effective October 8, 1990, 15 TexReg 5492.

### § 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.

Source: The provisions of this §305.532 adopted to be effective October 8, 1990, 15 TexReg 5492.

Cross References: This Section cited in 30 TAC §305.2, (relating to Definitions).

### § 305.533. Adoption of Environmental Protection Agency Issued Permits and Pretreatment Programs

On the date the Environmental Protection Agency (EPA) approves the state 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 the 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.

Source: The provisions of this §305.533 adopted to be effective October 8, 1990, 15 TexReg 5492.

### § 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—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—See §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

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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 the 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.

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(3) When a Texas pollutant discharge elimination system (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 three 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.

**Source:** The provisions of this §305.534 adopted to be effective October 8, 1990, 15 TexReg 5492.

**Cross References:** This Section cited in 30 TAC §305.126, (relating to Additional Standard Permit Conditions for Waste Discharge Permits).

### § 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 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 Authoriza-

tions) 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 of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) after considering its adverse effects, if the executive director determines that it will meet the three conditions listed in paragraph (1) of this subsection.

**Source:** The provisions of this §305.535 adopted to be effective October 8, 1990, 15 TexReg 5492.

### § 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 (CFR), Part 503) within the time provided in the regulations that establish such standards, even if the permit has not yet been modified to incorporate the standards.

(b) Additional contents of applications. In addition to all other requirements for information de-

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scribed 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 publicly owned treatment works (POTW) with a currently effective Texas pollutant discharge elimination system (TPDES) permit shall submit the application information required by this subsection 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.

**Source:** The provisions of this §305.536 adopted to be effective October 8, 1990, 15 TexReg 5492.

### § 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 commis-

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sion, 40 Code of Federal Regulations §122.41(l)(1), which is in effect as of the date of Texas pollutant discharge elimination system (TPDES) program authorization, as amended, is adopted by reference.

**Source:** The provisions of this §305.537 adopted to be effective October 8, 1990, 15 TexReg 5492.

### § 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.

**Source:** The provisions of this §305.538 adopted to be effective October 8, 1990, 15 TexReg 5492.

## SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TPDES PERMITS

### § 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 Texas Pollutant Discharge Elimination System (TPDES) program authorization, as amended, are adopted by reference.

**Source:** The provisions of this §305.541 adopted to be effective October 8, 1990, 15 TexReg 5492.

## SUBCHAPTER Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

**Authority:** The provisions of this Subchapter Q issued under the Texas Water Code, §§5.103, 5.105, and 26.011; and the Solid Waste Disposal Act, §3 and §4.

### § 305.571. Applicability

Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 Code of Federal Regulations (CFR) §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners)) are subject to §305.572 of this title (relating to Permit and Trial Burn Requirements). Owners and operators of existing boilers and industrial furnaces operating under the interim status standards of 40 CFR §266.103 and §335.224 of this title are subject to §305.573 of this title (relating to Interim Status and Trial Burn Requirements).

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**Source:** The provisions of this §305.571 adopted to be effective July 29, 1992, 17 TexReg 5016.

### § 305.572. Permit and Trial Burn Requirements

The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through June 1, 1990 (see 55 FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, and September 5, 1991, issues of the Federal Register (see 56 FedReg 7239, 32688, 42504, and 43874):

(1) §270.66(b)—Permit Operating Periods for New Boilers and Industrial Furnaces, except that any permit amendment or modification shall proceed according to the applicable requirements of Subchapter D of this chapter (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) §270.66(c)—Requirements for Trial Burn Plans;

(3) §270.66(d)—Trial Burn Procedures, except that all required submissions must be certified on behalf of the applicant by the signature of a person authorized pursuant to §305.44 of this title (relating to Signatories to Applications);

(4) §270.66(e)—Special Procedures for DRE Trial Burns; and

(5) §270.66(f)—Determinations Based on Trial Burn.

**Source:** The provisions of this §305.572 adopted to be effective July 29, 1992, 17 TexReg 5016.

**Cross References:** This Section cited in 30 TAC §305.571, (relating to Applicability); 30 TAC §305.573, (relating to Interim Status and Trial Burn Requirements).

### § 305.573. Interim Status and Trial Burn Requirements

(a) For the purpose of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §§266.104-266.107 and of determining adequate operating conditions under 40 CFR §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners), applicants owning or operating existing boilers or industrial furnaces

operated under the interim status standards of 40 CFR §266.103 and §335.224 of this title must either prepare and submit a trial burn plan for approval by the executive director and perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR §270.22(a)(6). Applicants who submit a trial burn plan and receive approval before submission of the Part B permit application must complete the trial burn and submit the results specified in 40 CFR §270.66(f) with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the executive director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn for approval by the executive director with Part B of the permit application, the approved trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the executive director.

(b) Owners and operators who have obtained approval of trial burn plans pursuant to 40 CFR §270.66 prior to the effective date of this section may request executive director approval of the trial burn plan and the executive director may approve the trial burn plan, whether or not the trial burn has been conducted. If the executive director does not approve the trial burn plan, then the owner or operator must prepare and submit a trial burn plan and receive approval from the executive director, and then perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR §270.22(a)(6).

**Source:** The provisions of this §305.573 adopted to be effective July 29, 1992, 17 TexReg 5016.

**Cross References:** This Section cited in 30 TAC §305.571, (relating to Applicability).

**Index to Title 30—See pamphlet  
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