

US EPA ARCHIVE DOCUMENT

Ch. 678, § 1
§ 345.085

71st LEGISLATURE—REGULAR SESSION

Sec. 345.085. JUDICIAL REVIEW. A person aggrieved by a final decision of the department is entitled to judicial review. (V.A.C.S. Art. 4476a, Sec. 5(g) (part).)

Sec. 345.086. INTERFERENCE WITH DEPARTMENT REPRESENTATIVE. A person may not interfere with, obstruct, or hinder a representative of the department performing a duty under this chapter. (V.A.C.S. Art. 4476a, Sec. 5(b).)

Sec. 345.087. CRIMINAL OFFENSE. (a) A person commits an offense if a person violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is punishable by a fine of not less than \$50 or more than \$200. (V.A.C.S. Art. 4476a, Sec. 9.)

[Chapters 346–360 reserved for expansion]

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CHAPTER 361. SOLID WASTE DISPOSAL ACT

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 361.001. **SHORT TITLE.** This chapter may be cited as the Solid Waste Disposal Act. (V.A.C.S. Art. 4477-7, Sec. 1 (part).)
- Sec. 361.002. **POLICY.** It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated. (V.A.C.S. Art. 4477-7, Sec. 1 (part).)
- Sec. 361.003. **DEFINITIONS.** Unless the context requires a different definition, in this chapter:

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

- (19) "Processing" means reduction, conversion to en

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

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

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

(4) "Commission" means the Texas Water Commission.

(5) "Commissioner" means the commissioner of health.

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

(7) "Department" means the Texas Department of Health.

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

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

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

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

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

(13) "Local government" means:

(A) a county;

(B) a municipality; or

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

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

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

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

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

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

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

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

(19) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for

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

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

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

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

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

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

(D) for the purposes of Section 104 of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

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

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

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

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

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

(23) "Removal" includes:

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

(B) taking necessary action into the environment;

(C) taking necessary action release of hazardous waste;

(D) disposing of removal;

(E) erecting a security;

(F) providing alternative threatened individuals not;

(G) acting under Section sponse, Compensation and;

(H) providing emergency (42 U.S.C. Section 5121 c

(I) taking any other not the public health and we release or threat of relea

(24) "Rubbish" means not

(A) combustible waste furniture, rubber, plastic

(B) noncombustible wa cans, metal furniture, an temperatures (1,600 to 1.

(25) "Sanitary landfill" : disposed of in accordance v health or the commission.

(26) "Sludge" means soil commercial, or industrial w air pollution control facility ment plant.

(27) This subdivision expi ery Act authority to the Rai rubbish, refuse, sludge from air pollution control facili semisolid, or contained gas cial, mining, and agricultur ties. The term does not inc

(A) solid or dissolved m irrigation return flows, or under Chapter 26, Water.

(B) soil, dirt, rock, sand to fill land if the object of surface improvements; or

(C) waste materials th development, or productio or material regulated by Natural Resources Code, activities associated with ing plants, pressure main waste as defined by the a Agency under the federa Conservation and Recove

(28) This subdivision is e Recovery Act authority to garbage, rubbish, refuse, sh plant, or air pollution contr

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

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

(D) disposing of removed material;

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

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

(G) acting under Section 104(b) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

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

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

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

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

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

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

(26) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(27) This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. "Solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

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

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

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

(28) This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. "Solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid,

liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

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

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

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

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

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

(31) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere. (V.A.C.S. Art. 4477-7, Sec. 2 (part).)

[Sections 361.004-361.010 reserved for expansion]

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

Sec. 361.011. DEPARTMENT'S JURISDICTION: MUNICIPAL SOLID WASTE. (a) The department is responsible for the management of municipal solid waste, excluding hazardous municipal waste, and shall coordinate municipal solid waste activities, excluding activities concerning hazardous municipal waste.

(b) The board of health shall guide the department in its management of municipal solid waste, excluding hazardous municipal waste.

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

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

(e) In matters under the department's jurisdiction, the department shall consult with:

(1) the commission concerning water pollution control and water quality aspects; and

(2) the Texas Air Control Board concerning air pollution control and ambient air quality aspects. (V.A.C.S. Art. 4477-7, Sec. 3(a).)

Sec. 361.012. DEPARTMENT'S JURISDICTION: MUNICIPAL SOLID WASTE AND INDUSTRIAL SOLID WASTE. When both municipal solid waste and industrial solid waste, except Class I industrial solid waste that is not routinely collected with municipal solid waste and hazardous waste, are involved in any activity of management of solid waste, the department has jurisdiction over the activity. (V.A.C.S. Art. 4477-7, Sec. 3(c) (part).)

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Sec. 361.013. SOLID WASTE. (a) The board of health shall charge an annual fee for each solid waste maintained under this chapter.

(b) The board of health shall determine the fees is reasonably related to:

(1) the population served;

(2) the volume of waste handled;

(3) the type and size of the waste.

(c) The board of health shall charge an annual fee for each solid waste maintained under this chapter. Sec. 361.014 and 361.065 to collect solid waste management, containing fees for solid waste management, contained in the revenue fund. (V.A.C.S. Art. 4477-7, Sec. 4(k)(3), (4) (part).)

(d) The fees collected under this chapter shall be deposited in the revenue fund. (V.A.C.S. Art. 4477-7, Sec. 4(k)(3), (4) (part).)

Sec. 361.014. SOLID WASTE. (a) The board of health shall charge an annual fee to transport solid waste maintained under this chapter by rule adopted under this chapter.

(b) The board of health by rule shall determine the amount of the fees is reasonable and related to:

(1) the volume or the type of waste;

(2) both the volume and the type of waste.

(c) The board of health shall charge an annual fee for each solid waste maintained under this chapter. Sec. 361.013 and 361.065 to collect solid waste management, contained in the revenue fund. (V.A.C.S. Art. 4477-7, Secs. 4(k)(3), (4) (part).)

Sec. 361.015. DEPARTMENT'S JURISDICTION: MUNICIPAL SOLID WASTE AND INDUSTRIAL SOLID WASTE. (a) The department is the state agency with jurisdiction over the management of municipal solid waste and industrial solid waste, not preemptively regulated by other law. (part.).

Sec. 361.016. MEMORANDUM OF UNDERSTANDING. (a) The board of health by rule shall determine the fees is reasonable and related to:

(1) any memorandum of understanding;

(2) any revision of a memorandum of understanding. 3(i).)

Sec. 361.017. COMMISSION'S JURISDICTION: MUNICIPAL SOLID WASTE AND HAZARDOUS MUNICIPAL SOLID WASTE. (a) The commission shall coordinate the management of industrial solid waste activities, excluding hazardous municipal waste, and shall coordinate municipal solid waste activities, excluding hazardous municipal waste.

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

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

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

(1) the department concerning water pollution control and water quality aspects; and

(2) the Texas Air Control Board concerning air pollution control and ambient air quality aspects. (V.A.C.S. Art. 4477-7, Sec. 3(a).)

Sec. 361.018. COMMISSION'S JURISDICTION: INDUSTRIAL SOLID WASTE AND HAZARDOUS MUNICIPAL SOLID WASTE. When both industrial solid waste and hazardous municipal solid waste are involved in any activity of management of industrial solid waste and hazardous municipal solid waste, the commission has jurisdiction over the activity. (V.A.C.S. Art. 4477-7, Sec. 3(c) (part).)

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Sec. 361.013. SOLID WASTE FACILITY FEE. (a) The department shall charge an annual fee for each solid waste facility authorized by the department to be operated or maintained under this chapter.

(b) The board of health shall adopt fees according to a schedule in which the amount of the fees is reasonably related to one or more of the following factors:

(1) the population served by the facility;

(2) the volume of waste handled by the facility; or

(3) the type and size of the facility.

(c) The board of health shall set the amount of fees under this section and Sections 361.014 and 361.065 to collect enough revenue to meet the expenses of performing the solid waste management, control, and permit duties of the department.

(d) The fees collected under this section shall be deposited to the credit of the general revenue fund. (V.A.C.S. Art. 4477-7, Secs. 4(k)(2), (4).)

Sec. 361.014. SOLID WASTE TRANSPORTATION FEE. (a) The department shall charge an annual fee to transporters of solid waste who are required to register with the department by rule adopted under this chapter.

(b) The board of health by rule shall adopt fees according to a schedule in which the amount of the fees is reasonably related to:

(1) the volume or the type of waste transported; or

(2) both the volume and type of waste.

(c) The board of health shall set the amount of the fees under this section and Sections 361.013 and 361.065 to collect enough revenue to meet the expenses of performing the solid waste management, control, and permit duties of the department. (V.A.C.S. Art. 4477-7, Secs. 4(k)(3), (4) (part).)

Sec. 361.015. DEPARTMENT'S JURISDICTION: RADIOACTIVE WASTE. The department is the state agency under Chapter 401 that regulates radioactive waste activities not preemptively regulated by the federal government. (V.A.C.S. Art. 4477-7, Sec. 3(d) (part).)

Sec. 361.016. MEMORANDUM OF UNDERSTANDING BY BOARD OF HEALTH. The board of health by rule shall adopt:

(1) any memorandum of understanding between the department and any other state agency; and

(2) any revision of a memorandum of understanding. (V.A.C.S. Art. 4477-7, Sec. 3(f).)

Sec. 361.017. COMMISSION'S JURISDICTION: INDUSTRIAL SOLID WASTE AND HAZARDOUS MUNICIPAL WASTE. (a) The commission is responsible for the management of industrial solid waste and hazardous municipal waste and shall coordinate industrial solid waste activities and hazardous municipal waste activities.

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

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

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

(1) the department concerning the public health aspects; and

(2) the Texas Air Control Board concerning the air pollution control and ambient air quality aspects. (V.A.C.S. Art. 4477-7, Sec. 3(b).)

Sec. 361.018. COMMISSION'S JURISDICTION OVER HAZARDOUS WASTE COMPONENTS OF RADIOACTIVE WASTE. (a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation

(7) the consideration of the reusing and recycling waste equipment; and

(8) the evaluation of the disposal programs.

(e) The chairman shall prepare a report which shall be submitted for the approval of the council. The report is a public document.

Sec. 361.022. PUBLIC POLI
SLUDGE. (a) To protect the pul
that, in generating, treating, st
sludge, the methods listed und
economically and technological
method to the type of solid was
stored.

(b) For municipal solid waste transferred, in the order listed:

(1) minimization of waste p

(2) reuse or recycling of waste

(3) treatment to destroy or
resources if the treatment do
r

(4) land disposal.

(c) For municipal sludge, the

(1) minimization of sludge;
toxins in sludge;

- (2) treatment of sludge to by-products, or reduce the cu

(3) marketing and distribution do not threaten p

(4) applying sludge to land
(5) land treatment; or

- (6) landfilling.

(d) In adopting rules to improve management, the board of health management methods under the (part.)

(1) minimization of waste p

- (2) reuse or recycling of waste;
- (3) treatment to destroy hazardous inorganic substances;
- (4) treatment to reduce hazardous organic substances;
- (5) underground injection;
- (6) land disposal.

(b) Under Subsection (a)(3), or the context of other relevant facts, the quality of destruction, operator Secs. 3(e)(1), (2).)

(7) the consideration of the use of incentives to encourage waste minimization and reusing and recycling waste, and the use of resource recovery and detoxification equipment; and

(8) the evaluation of the feasibility of household hazardous waste collection and disposal programs.

(e) The chairman shall prepare a report summarizing each quarterly meeting. The report shall be submitted for approval by a majority of agencies represented on the council. The report is a public document. (V.A.C.S. Art. 4477-7, Secs. 3(g)(1), (2).)

Sec. 361.022. PUBLIC POLICY CONCERNING MUNICIPAL SOLID WASTE AND SLUDGE. (a) To protect the public health and environment, it is the state's public policy that, in generating, treating, storing, and disposing of municipal solid waste or municipal sludge, the methods listed under Subsections (b) and (c) are preferred to the extent economically and technologically feasible and considering the appropriateness of the method to the type of solid waste material or sludge generated, treated, disposed of, or stored.

(b) For municipal solid waste, not including sludge, the following methods are preferred, in the order listed:

- (1) minimization of waste production;
- (2) reuse or recycling of waste;
- (3) treatment to destroy or reprocess waste to recover energy or other beneficial resources if the treatment does not threaten public health, safety, or the environment; or
- (4) land disposal.

(c) For municipal sludge, the following methods are preferred, in the order listed:

- (1) minimization of sludge production and concentrations of heavy metals and other toxins in sludge;
- (2) treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of sludge;
- (3) marketing and distribution of sludge and sludge products if the marketing and distribution do not threaten public health, safety, or the environment;
- (4) applying sludge to land for beneficial use;
- (5) land treatment; or
- (6) landfilling.

(d) In adopting rules to implement public policy concerning municipal solid waste management, the board of health shall consider the preference of municipal solid waste management methods under this section. (V.A.C.S. Art. 4477-7, Secs. 3(e)(3), (4); 4(c) (part).)

Sec. 361.023. PUBLIC POLICY CONCERNING HAZARDOUS WASTE. (a) To protect the public health and environment, it is the state's public policy that, in generating, treating, storing, and disposing of hazardous waste, the following methods are preferred to the extent economically and technologically feasible, in the order listed:

- (1) minimization of waste production;
- (2) reuse or recycling of waste, or both;
- (3) treatment to destroy hazardous characteristics;
- (4) treatment to reduce hazardous characteristics;
- (5) underground injection; and
- (6) land disposal.

(b) Under Subsection (a)(3), on-site destruction is preferred, but it shall be evaluated in the context of other relevant factors such as transportation hazard, distribution of risk, quality of destruction, operator capability, and site suitability. (V.A.C.S. Art. 4477-7, Secs. 3(e)(1), (2).)

Sec. 361.024. RULES AND STANDARDS. (a) The board of health and the commission may each adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of the solid waste under their respective jurisdictions under this chapter.

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

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

(d) Rules adopted by the commission under Section 361.036 and Sections 361.097-361.108 for solid waste facilities may differ according to the type or hazard of hazardous waste managed and the type of waste management method used. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.025. EXEMPT ACTIVITIES. (a) The commission and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities that are associated with oil and gas exploration, development, and production and are therefore exempt from regulation under this chapter.

(b) The list shall be adopted by rule and amended as necessary. (V.A.C.S. Art. 4477-7, Sec. 3(f) (part).)

Sec. 361.026. ASSISTANCE PROVIDED BY DEPARTMENT AND COMMISSION.

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

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

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

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

(B) research to improve solid waste management.

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

(c) If the department and the commission do not participate jointly, each shall coordinate efforts undertaken individually so that separate but similar programs and activities are compatible. (V.A.C.S. Art. 4477-7, Sec. 4(h) (part).)

Sec. 361.027. TRAINING OF SOLID WASTE TECHNICIANS. (a) The department and the commission may each:

(1) develop a program to train solid waste technicians to improve the competency of those technicians; and

(2) issue letters of competency.

(b) The owner or operator of a solid waste facility is encouraged to employ as site manager a solid waste technician holding a letter of competency from the appropriate agency.

(c) The department and the commission may each:

(1) prescribe standards of training required for the program;

(2) determine the duration of the letter of competency;

(3) award one or more categories of letters of competency with each category reflecting a different degree of training or skill;

(4) require a reasonable, nonrefundable fee, in an amount determined from time to time by the agency, to be paid by participants, deposited to the credit of the general revenue fund, and used to administer the program;

(5) extend or renew letters of competency issued by the agency; and

(6) withdraw a letter of competency from this chapter or a rule of the commission. (V.A.C.S. Art. 4477-7, Sec. 4(h) (part).)

Sec. 361.028. INDUSTRIAL SOLID WASTE. (a) The commission shall provide information concerning:

(1) particular quantities of solid waste for recovery;

(2) persons interested in solid waste for purposes of recovery;

(3) methods for the treatment of solid waste.

(b) The industrial solid and hazardous waste one or more reciprocity agreements by Subsection (a) for similar purposes.

(c) The commission may cooperate with the industrial solid and hazardous waste one or more reciprocity agreements by Subsection (a) for similar purposes.

(d) The commission may prepay the industrial solid and hazardous waste subscription fee to offset the cost of the subscription.

(e) The commission may seek sources to the extent possible to offset the cost of the subscription. (V.A.C.S. Art. 4477-7, Sec. 4A.)

Sec. 361.029. COLLECTION OF SOLID WASTE THAT COULD BE CLASSIFIED AS HAZARDOUS. (a) The commission shall provide information concerning the collection and disposal of hazardous waste.

(b) The rules must specify the persons involved in the collection of solid waste.

(c) A person is not liable for advertising, promoting, or disposing of those household materials that are not preclude liability for dangerous or hazardous waste by the person. (V.A.C.S. Art. 4477-7, Sec. 4A.)

Sec. 361.030. FEDERAL FUNDS. (a) The department and the commission jointly accept funds from the federal government and spend money in the manner prescribed by law appropriate between the federal government and the state. (V.A.C.S. Art. 4477-7, Sec. 4(h) (part).)

Sec. 361.031. FINANCIAL ASSISTANCE. (a) The department and the commission jointly accept funds from the federal government and spend money in the manner prescribed by law appropriate between the federal government and the state. (V.A.C.S. Art. 4477-7, Sec. 4(h) (part).)

(1) solid waste planning;

(2) installation of solid waste management facilities;

(3) administration of solid waste management facilities.

(b) The grants made under this section shall be made to the state agency to which the grant is made.

(c) The amount of financial assistance to a local government shall be at least in equal proportion to the amount of financial assistance to the state agency.

(6) withdraw a letter of competency for good cause, which may include a violation of this chapter or a rule of the agency concerning the technician's duties and responsibilities. (V.A.C.S. Art. 4477-7, Sec. 4(g).)

Sec. 361.028. INDUSTRIAL SOLID AND HAZARDOUS WASTE MATERIALS EXCHANGE. (a) The commission shall establish an industrial solid and hazardous waste materials exchange that provides for the exchange, between interested persons, of information concerning:

(1) particular quantities of industrial solid or hazardous waste available in this state for recovery;

(2) persons interested in acquiring certain types of industrial solid or hazardous waste for purposes of recovery; and

(3) methods for the treatment and recovery of industrial solid or hazardous waste.

(b) The industrial solid and hazardous waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of information described by Subsection (a) for similar information from a program operated in another state.

(c) The commission may contract for a private person or public entity to establish or operate the industrial solid and hazardous waste materials exchange.

(d) The commission may prescribe rules concerning the establishment and operation of the industrial solid and hazardous waste exchange, including the setting of a necessary subscription fee to offset the cost of participation in the program.

(e) The commission may seek grants and contract support from federal and other sources to the extent possible and may accept gifts to support its purposes and programs. (V.A.C.S. Art. 4477-7, Sec. 4A, as added by Ch. 139, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.029. COLLECTION AND DISPOSAL OF HOUSEHOLD MATERIALS THAT COULD BE CLASSIFIED AS HAZARDOUS WASTE. (a) The board of health and the commission shall provide by rule for interested persons to engage in activities that involve the collection and disposal of household materials that could be classified as hazardous waste.

(b) The rules must specify the necessary requirements concerning the training of persons involved in the collection and disposal of those household materials.

(c) A person is not liable for damages as a result of any act or omission in the course of advertising, promoting, or distributing educational materials concerning the collection or disposal of those household materials in accordance with the rules. This subsection does not preclude liability for damages as a result of gross negligence of or intentional misconduct by the person. (V.A.C.S. Art. 4477-7, Sec. 4(n).)

Sec. 361.030. FEDERAL FUNDS. The department or commission may individually or jointly accept funds from the federal government for purposes concerning solid waste management and spend money received from the federal government for those purposes in the manner prescribed by law and in accordance with agreements as are necessary and appropriate between the federal government and the agency. (V.A.C.S. Art. 4477-7, Sec. 4(h) (part).)

Sec. 361.031. FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS. (a) The department and the commission may administer and spend state funds provided to them by legislative appropriations, or otherwise, to make grants to local governments for:

(1) solid waste planning;

(2) installation of solid waste facilities; and

(3) administration of solid waste programs.

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

(c) The amount of financial assistance granted by the state through the department or commission to a local government under this chapter must be matched by local government funds at least in equal amounts. (V.A.C.S. Art. 4477-7, Sec. 4(i).)

Sec. 361.032. INSPECTIONS; RIGHT OF ENTRY. (a) The department and the commission are each authorized to inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of the solid waste under the agency's jurisdiction.

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

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

(d) Agents or employees inspecting an establishment shall observe the establishment's rules on safety, internal security, and fire protection. (V.A.C.S. Art. 4477-7, Secs. 4(d), 7(a).)

Sec. 361.033. INSPECTIONS REQUIRED BY ENVIRONMENTAL PROTECTION AGENCY. (a) The commission shall inspect regulated hazardous waste management and disposal facilities periodically as required by the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

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

(c) The commission may randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the United States Environmental Protection Agency. (V.A.C.S. Art. 4477-7, Sec. 7(c).)

Sec. 361.034. REPORTS. (a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed hazardous waste permit and disposal fees, if the fees are approved by the legislature, and related activities to determine the appropriateness of the fee structure;

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

(3) projections for three years from the due date of the report of the volume of waste by type of waste, disposition of waste, and remaining waste disposal capacity.

(b) To develop the reports required under Subsection (a), the commission shall adopt rules requiring a person who generates, stores, treats, or disposes of hazardous waste to submit annually to the commission a report detailing projections of waste volume, disposition, and remaining capacity, concerning each facility owned or operated by the person. The report required under this subsection shall be submitted to the commission by March 1 of each year. (V.A.C.S. Art. 4477-7, Sec. 3(h) (part).)

Sec. 361.035. RECORDS AND REPORTS; DISPOSAL OF HAZARDOUS WASTE. (a) The commission by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain records and to submit to the commission reports necessary for the commission to determine the amount of hazardous waste disposal.

(b) The commission by rule shall establish the date on which a report required by this section is to be submitted. (V.A.C.S. Art. 4477-7, Sec. 13a.)

Sec. 361.036. RECORDS AND MANIFESTS REQUIRED; CLASS I INDUSTRIAL SOLID WASTE OR HAZARDOUS WASTE. The commission by rule shall require a person who generates, transports, processes, stores, or disposes of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that the waste is transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose. (V.A.C.S. Art. 4477-7, Sec. 13(c) (part).)

Sec. 361.037. ACCESS TO RECORDS. (a) The commission shall make available to the public or employees of the commission business hours any records pertaining to the commission's business.

(b) Except as provided by this section, the records shall be confidential. If the owner of the records requests that the records be made confidential, the records shall be confidential.

(c) Subsection (b) does not apply to records that are not confidential by the characteristics of solid waste to be held confidential. (V.A.C.S. Art. 4477-7, Sec. 13a.)

Sec. 361.038. ANNUAL INSPECTION REPORT. The commission shall publish an annual report.

(1) summarizes the commission's activities conducted during the previous year;

(2) lists each hazardous waste facility inspected;

(b) The report must identify the following:

(1) each facility that is in noncompliance with each facility with an exemption;

(2) each facility that has one or more violations;

(3) each facility that has one or more violations that has been adjudicated during the previous year, nonclerical violations represented an imminent and substantial threat to the environment.

(c) The report must identify the corrective actions or descriptions of the violations.

(d) The report shall be submitted to the legislature. The commission shall publish notice in the Texas Register. (V.A.C.S. Art. 4477-7, Sec. 13a.)

Sec. 361.039. CONSTRUCTION OF CHAPTER. By this chapter, this chapter does not limit the powers, functions, and duties of the commission. (V.A.C.S. Art. 4477-7, Sec. 14.)

[Sections 361.040 through 361.060 are omitted.]

SECTION 361.061

Sec. 361.061. PERMITS; SOLID WASTE. (a) The commission shall issue a permit to certain persons who generate, store, treat, or dispose of solid waste in a facility that may each require and issue permit, and maintenance of the solid waste over which it has jurisdiction. (4(e) (part).)

Sec. 361.062. COMPATIBILITY. (a) The commission shall issue a permit to construct, operate, or dispose of solid waste in a facility approved by the board of health. The board of health shall consider whether the solid waste management is compatible with the county's zoning. (b) Until a local solid waste management plan is adopted by rule, the department of health shall consider an application for a solid waste management plan.

Sec. 361.037. ACCESS TO HAZARDOUS WASTE RECORDS. (a) Authorized agents or employees of the commission have access to and may examine and copy during regular business hours any records pertaining to hazardous waste management and control.

(b) Except as provided by this subsection, records copied under Subsection (a) are public records. If the owner of the records shows to the satisfaction of the executive director that the records would divulge trade secrets if made public, the commission shall consider the copied records confidential.

(c) Subsection (b) does not require the commission to consider the composition or characteristics of solid waste being processed, stored, disposed of, or otherwise handled to be held confidential. (V.A.C.S. Art. 4477-7, Secs. 7(b), (d).)

Sec. 361.038. ANNUAL INSPECTION REPORT. (a) In January of each year, the commission shall publish an annual inspection report that:

(1) summarizes the commission's inspection strategy and the results of inspections conducted during the previous fiscal year; and

(2) lists each hazardous waste treatment, storage, and disposal facility not inspected.

(b) The report must identify each hazardous waste facility inspected and include a list of:

(1) each facility that is in compliance with hazardous waste regulations, including each facility with an exemplary record of compliance over the preceding three years;

(2) each facility that has only minor or clerical violations; and

(3) each facility that has substantive, nonclerical violations, including each facility that has been adjudicated during the preceding three years to have committed substantive, nonclerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial endangerment to the public health and safety of the environment.

(c) The report must identify the substantive, nonclerical violations and either summarize corrective actions or describe the status of unresolved violations.

(d) The report shall be submitted to the governor, lieutenant governor, and speaker of the house. The commission shall provide notice of the report's availability by publishing notice in the Texas Register. (V.A.C.S. Art. 4477-7, Secs. 7(e), (f), (g).)

Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the department, the commission, the Texas Air Control Board, or a local government in performing the powers, functions, and duties vested in those governmental entities by other law. (V.A.C.S. Art. 4477-7, Sec. 14.)

[Sections 361.040-361.060 reserved for expansion]

SUBCHAPTER C. PERMITS

Sec. 361.061. PERMITS; SOLID WASTE FACILITY. Except as provided by Section 361.090 with respect to certain industrial solid waste, the department and the commission may each require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of the solid waste over which it has jurisdiction under this chapter. (V.A.C.S. Art. 4477-7, Sec. 4(e) (part).)

Sec. 361.062. COMPATIBILITY WITH COUNTY'S PLAN. (a) Before the department issues a permit to construct, operate, or maintain a solid waste facility to process, store, or dispose of solid waste in a county that has a local solid waste management plan approved by the board of health under Chapter 363 (Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act), the department must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local solid waste management plan.

(b) Until a local solid waste management plan is approved by the board of health and adopted by rule, the department may not consider the plan and its contents in the review of an application for a solid waste facility permit. (V.A.C.S. Art. 4477-7, Sec. 4(o).)

Sec. 361.063. PREAPPLICATION LOCAL REVIEW COMMITTEE PROCESS. (a) The department and the commission shall encourage applicants for solid waste facilities under the jurisdiction of the department or for hazardous waste management facilities to enter into agreements with affected persons to resolve issues of concern. During this process, persons are encouraged to identify issues of concern and work with the applicant to resolve those issues.

(b) The agreement shall be made through participation in a local review committee process that includes a good faith effort to identify issues of concern, describe them to the applicant, and attempt to resolve those issues before the hearing on the permit application begins. A person is not required to be a local review committee member to participate in a local review committee process.

(c) If an applicant decides to participate in a local review committee process, the applicant must file with the department or commission, as appropriate, a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. A copy of the notice shall be delivered to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be delivered to the mayor of the municipality. The filing of the notice with the department or commission, as appropriate, initiates the preapplication review process.

(d) Not later than the 15th day after the date the notice of intent is filed under Subsection (c), the local review committee shall be appointed. The board of health and commission shall adopt rules concerning the composition and appointment of a local review committee.

(e) The local review committee shall meet not later than the 21st day after the date the notice of intent is filed under Subsection (c). The preapplication review process must continue for 90 days unless the process is shortened or lengthened by agreement between the applicant and the local review committee.

(f) The commission, as appropriate, may award to a person, other than the applicant, who has participated in the local review committee process under this section concerning an application for a hazardous waste management facility all or a part of the person's reasonable costs for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing concerning issues that are raised by the person in the local review committee process and that are unresolved at the beginning of the hearing on the permit application. The total amount of awards granted to all persons under this subsection concerning an application may not exceed \$25,000. In determining the appropriateness of the award, the commission shall consider whether:

- (1) the evidence or analysis provided by the studies, reports, and witnesses is significant to the evaluation of the application;
- (2) the evidence or analysis would otherwise not have been provided in the proceeding; and
- (3) the local review committee was established in accordance with commission rules.

(g) Except as provided by Subsection (f), if an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs under Subsection (f), shall waive any requirement that the person affected has participated in a local review committee process.

(h) Except as provided by Subsection (f), costs awarded by the commission under Subsection (f) are assessed against the applicant. Rules shall be adopted for the award of those costs. Judicial review of an award of costs is under the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) A local review committee shall:

- (1) interact with the applicant in a structured manner during the preapplication review stage of the permitting process and, if necessary, during the technical review stage of the permitting process to raise and attempt to resolve both technical and nontechnical issues of concern; and

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(2) produce a fact-finding report to answer any unanswered questions.

(j) The applicant must submit a copy of the application with its permit application.

(k) If an applicant, after the proposed facility, including other elected officials, does not have apparent opposition or the applicant's good faith effort is not sufficient, Subsection (f).

(l) This section does not apply to:

(1) a solid waste or hazardous waste management facility that was filed, or that was a

(2) amendments to applications;

(3) changes in waste management activities under Subchapter 4477-7, Sec. 4(e)(12).

Sec. 361.064. PERMIT APPLICATION. (a) The department or the commission, as appropriate, under this subchapter, the board of health and commission provided by this subchapter:

(1) the form of and requirements for the application;

(2) the procedures for the application (part).

Sec. 361.065. PERMIT FEE. (a) The board of health and commission, as appropriate, for the submission to and review of the application under this subchapter.

(b) The board of health and commission shall determine the amount of the fees is reasonable.

(1) the population to be served;

(2) the volume of waste to be managed;

(3) the type and size of the facility;

(4) the cost of the permit.

(c) The board of health and commission shall adopt rules under Subchapters 361.013 and 361.014 to collect fees for solid waste management, control, and disposal.

(d) The fees collected under this section shall be deposited in the revenue fund. (V.A.C.S. Art. 4, Sec. 1001.)

Sec. 361.066. SUBMISSION OF APPLICATION. (a) An applicant must submit a copy of the application to the department or the commission, as appropriate, not later than the 15th day after the date the application is submitted to the department or the commission.

(b) If an applicant does not submit a copy of the application by this section, the application is considered withdrawn. (V.A.C.S. Art. 4, Sec. 1001, 70th Leg., Reg. Sess., 1987.)

Sec. 361.067. REVIEW OF PERMIT APPLICATIONS. (a) If the department or the commission receives a permit application submitted to it is administrative summary of its contents to:

(1) the Texas Air Control Board;

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(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions.

(j) The applicant must submit the report required under Subsection (i)(2) to the agency with its permit application.

(k) If an applicant, after reasonable efforts to determine if local opposition exists to its proposed facility, including discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or because a local review committee is not established despite the applicant's good faith efforts, costs may not be assessed against the applicant under Subsection (f).

(l) This section does not apply to:

(1) a solid waste or hazardous waste management facility for which an application was filed, or that was authorized to operate, as of September 1, 1985;

(2) amendments to applications that were pending on September 1, 1987; or

(3) changes in waste storage or processing operations at existing sites at which waste management activities were being conducted on September 1, 1987. (V.A.C.S. Art. 4477-7, Sec. 4(e)(12).)

Sec. 361.064. PERMIT APPLICATION FORM AND PROCEDURES. If the department or the commission exercises the power to issue permits for solid waste facilities under this subchapter, the agency exercising the power, to the extent not otherwise provided by this subchapter, shall prescribe:

(1) the form of and reasonable requirements for the permit application; and

(2) the procedures for processing the application. (V.A.C.S. Art. 4477-7, Sec. 4(e) (part).)

Sec. 361.065. PERMIT APPLICATION FEE. (a) The department shall charge a fee for the submission to and review by the department of a permit application under this subchapter.

(b) The board of health by rule shall adopt fees according to a schedule in which the amount of the fees is reasonably related to one or more of the following:

(1) the population to be served by the facility;

(2) the volume of waste to be handled by the facility;

(3) the type and size of the facility; or

(4) the cost of the permit application review.

(c) The board of health shall set the amount of the fees under this section and Sections 361.013 and 361.014 to collect enough revenue to meet the expenses of performing the solid waste management, control, and permit duties of the department.

(d) The fees collected under this section shall be deposited to the credit of the general revenue fund. (V.A.C.S. Art. 4477-7, Secs. 4(k)(1), (4).)

Sec. 361.066. SUBMISSION OF ADMINISTRATIVELY COMPLETE PERMIT APPLICATION. (a) An applicant must submit any portion of an application that the department or the commission determines is necessary to make the application administratively complete not later than the 270th day after the applicant receives notice from the department or the commission that the additional information or material is needed.

(b) If an applicant does not submit an administratively complete application as required by this section, the application is considered withdrawn, unless there are extenuating circumstances. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(B) (part), as amended by Ch. 299, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.067. REVIEW OF PERMIT APPLICATION BY OTHER GOVERNMENTAL ENTITIES. (a) If the department or the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to:

(1) the Texas Air Control Board;

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

(b) A governmental entity to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to which the application was originally submitted, to present comments and recommendations on the permit application before the agency acts on the application. (V.A.C.S. Art. 4477-7, Sec. 4(e)(1).)

Sec. 361.068. WHEN APPLICATION IS ADMINISTRATIVELY COMPLETE. A permit application is administratively complete when:

- (1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the department or the commission; and
- (2) the permit application is ready for technical review in accordance with the rules of the board of health or commission. (V.A.C.S. Art. 4477-7, Sec. 2(1).)

Sec. 361.069. DETERMINATION OF LAND USE COMPATIBILITY. The department or the commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088. (V.A.C.S. Art. 4477-7, Sec. 4(e)(2) (part).)

Sec. 361.070. SOLE PERMIT HEARING. (a) Except for a permit described under Section 361.071, all participation in the review of a permit application must be through one agency hearing, which shall be the sole permit hearing.

(b) The department or the commission shall conduct the hearing as the lead agency in accordance with the division of their jurisdiction. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(i) (part).)

Sec. 361.071. PERMIT FROM OTHER AGENCIES. The owner or operator of a hazardous waste or solid waste management facility is not required to obtain a permit from any agency of the state other than the department or commission to store, process, treat, dispose of, or destroy solid waste or hazardous waste unless:

- (1) a permit is required under the new source review requirements of Part C or D, Title I, of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) for a major source or a major modification; or
- (2) a permit is required by the Railroad Commission of Texas under Chapter 27, Water Code. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(i) (part).)

Sec. 361.072. JOINT RULES OR MEMORANDA OF AGREEMENT WITH DEPARTMENT OR COMMISSION. (a) The Texas Air Control Board and other agencies that might otherwise have jurisdiction for permitting hazardous or solid waste facilities shall enter into joint rules or memoranda of agreement with the department or the commission.

(b) The joint rules or memoranda of agreement:

- (1) must include the criteria that the Texas Air Control Board or other agency that might otherwise have jurisdiction may prescribe for use by the lead agency in addressing the concerns of the Texas Air Control Board or other agency in the permitting process; and
- (2) shall at a minimum be consistent with the applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(c) Consistent with Section 361.070, the joint rules or memoranda of agreement must provide for the incorporation of provisions in the permits of the department or the commission for off-site waste management facilities concerning units that are:

- (1) not otherwise commission; and
- (2) subject to the relevant agency.

(d) It is the intent o

- (1) to the extent p agency shall defer t Board on the effect management activitie
- (2) the Texas Air (air pollution control.

Sec. 361.073. AIR (

Except as otherwise pr shall perform a technic solid waste or a hazarde under Section 361.072.

(b) Except for a perm hazardous waste, this se

- (1) a hazardous was
- (2) the expansion of ber 1, 1987.

(c) The Texas Air Co forward recommendation time established by the l application.

(d) The lead agency sh proposed permit provision agency determines that stringent than applicable Agency for state program amended by the Resource Section 6901 et seq.). I conflict with provisions pr agencies shall attempt to r ends.

(e) If a contested case h the Texas Air Control Boas incorporated into the perm held, the Texas Air Contr testimony concerning the a lead agency, is entitled to c Board.

(f) At the conclusion of t the Texas Air Control Boar

- (1) proposed findings o
- (2) if applicable, propos application that relate to

(g) The hearing examiner accept the information subn unless that body finds that t supported by a preponderan

(h) The Texas Air Control final decision of the lead age

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- (1) not otherwise subject to the permitting requirements of the department or commission; and
- (2) subject to the permitting requirements of the Texas Air Control Board or other relevant agency.

(d) It is the intent of the legislature that:

(1) to the extent practicable in conformance with Sections 361.070-361.078, the lead agency shall defer to the policies, rules, and interpretations of the Texas Air Control Board on the effect on air quality of the proposed hazardous waste or solid waste management activities; and

(2) the Texas Air Control Board remain the state's principal authority in matters of air pollution control. (V.A.C.S. Art. 4477-7, Secs. 4(e)(4)(A)(i) (part), (ii) (part).)

Sec. 361.073. AIR CONTROL BOARD REVIEW OF PERMIT APPLICATION. (a) Except as otherwise provided by Sections 361.070-361.083, the Texas Air Control Board shall perform a technical review of the air quality aspects of a permit application for a solid waste or a hazardous waste management facility concerning the criteria established under Section 361.072.

(b) Except for a permit application for a facility that incinerates or burns solid or hazardous waste, this section does not apply to an application for:

- (1) a hazardous waste management facility that existed on September 1, 1987; or
- (2) the expansion of a hazardous waste land disposal facility that existed on September 1, 1987.

(c) The Texas Air Control Board shall complete its review under this section and forward recommendations or proposed permit provisions to the lead agency within the time established by the lead agency rules for the completion of technical review of the application.

(d) The lead agency shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by the Texas Air Control Board, unless the lead agency determines that the recommendations or proposed permit provisions are less stringent than applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.). If the Texas Air Control Board's proposed permit provisions conflict with provisions proposed by the lead agency technical staff, the staffs of the two agencies shall attempt to resolve the conflict before the technical review of the application ends.

(e) If a contested case hearing on a permit application is not held by the lead agency, the Texas Air Control Board's recommendations or proposed permit provisions shall be incorporated into the permit issued by the lead agency. If a contested case hearing is held, the Texas Air Control Board shall develop and present the state's evidence and testimony concerning the air quality aspects of the application. Any party, including the lead agency, is entitled to cross-examine any testifying witness of the Texas Air Control Board.

(f) At the conclusion of the presentation of testimony, the hearing examiner shall give the Texas Air Control Board at least 30 days in which to submit:

- (1) proposed findings of fact and conclusions of law; and
- (2) if applicable, proposed permit language, concerning the air quality aspects of the application that relate to the criteria established under Section 361.072.

(g) The hearing examiner and the final decision-making body of the lead agency must accept the information submitted by the Texas Air Control Board under Subsection (f) unless that body finds that the recommendations of the Texas Air Control Board are not supported by a preponderance of the evidence.

(h) The Texas Air Control Board may seek judicial review of the air quality aspects of a final decision of the lead agency. Both the lead agency and the Texas Air Control Board

(V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(ii) (part).)

Sec. 361.074. CERTAIN PERMIT APPLICATIONS NOT AFFECTED. (a) Permit applications for hazardous waste or solid waste management facilities for which contested evidentiary hearings have commenced at the Texas Air Control Board before September 1, 1985, or appeals from decisions of the Texas Air Control Board on those applications are not affected by Sections 361.072-361.073 and 361.075-361.078.

(b) An applicant may not withdraw a permit application to circumvent the intent of Subsection (a). (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(ii) (part).)

Sec. 361.075. DELEGATION OF AIR CONTROL BOARD AUTHORITY. The Texas Air Control Board may delegate to its executive director the powers and duties conferred on the board under Sections 361.072 and 361.073. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(ii) (part).)

Sec. 361.076. OTHER STATE AGENCIES' REVIEW OF PERMIT APPLICATION:
(a) An agency other than the Texas Air Control Board may review the board's proposed action.

(a) An agency other than the Texas Air Control Board may review the lead agency's proposed action concerning a permit application and determine if its concerns have been adequately addressed if the agency:

- (1) might otherwise have jurisdiction for permitting the facility; and
- (2) requested an opportunity to review the lead agency's proposed action.

(b) The other agency may review the lead agency's proposed action:

- (1) after the lead agency completes its technical review of the permit application; and
- (2) for a period of 20 days after the date on which the lead agency's technical review period ends.

(c) If the other agency determines that its concerns have not been adequately addressed, the other agency's sole remedy concerning the permit is to present its concerns in the permit proceedings of the lead agency.

(d) The other agency is entitled to:

- (1) request a hearing;
- (2) intervene as a matter of law;
- (3) seek judicial review; and

(4) enforce each aspect of a lead agency permit concerning the other agency's jurisdiction. (W.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(iii).)

Sec. 361.077. EXEMPTION OF CERTAIN FACILITIES THAT BURN HAZARDOUS WASTE. Sections 361.076-361.076 do not apply to a facility that burns hazardous waste unless the facility is required to obtain a permit for the burning from the commission under rules adopted by the commission under a state hazardous waste regulatory program. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(iv).)

Sec. 361.078. MAINTENANCE OF STATE PROGRAM AUTHORIZATION UNDER FEDERAL LAW. This subchapter does not abridge, modify, or restrict the authority of the commission to adopt rules under Subchapters B and C, to issue permits and to enforce the terms and conditions of the permits, concerning hazardous waste management to the extent necessary for the commission to receive and maintain state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.). (W.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(v).)

Sec. 361.079. NOTICE CONCERNING RECEIPT OF PERMIT APPLICATION;
HEARING PROCEDURES. (a) The board of health and the commission by rule shall
establish procedures for public notice and a public hearing under Section 361.080 or
361.081.

(b) To improve the timeliness of notice to the public of a public hearing under Section 361.050 or 361.081, public notice of receipt of the permit application shall be provided at the time a permit application is administratively complete as determined by the department or the commission. (N.A.C.S. Art. 4477-7, Sec. 4(e)(4)(B) (part).)

Sec. 361.080. HEARING
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concerning a hazardous indu
county in which the facility

Sec. 361.081. NOTICE OF
FILL PERMIT. (a) The dep
hearing on an application for
weeks beginning not later th
hearing.

(b) The notice shall be published in the court newspaper if the notice is not published in a newspaper of general circulation.

(c) The department shall receive the application for a permit for property located within one mile of the county in which the land determines the permit application by certified or registered mail. States postal service not more than 10 days before the hearing.

(d) The department shall provide for the mailing of notices to the owners of the property involved if the notices have been complied with on the mailing. Notices were deposited as required by at least 35 percent of the affected property owners in the subsection.

(e) Hearings under this section adopted by the department and Texas Register Act (Article 4477-7, Sec. 4(e)(4)(B), as an

Sec. 361.082. APPLICATION
HEARING. (a) A person may
having first obtained a hazard

(b) On its own motion or the public hearing on an application subchapter.

(c) The commission by rule hearing.

(d) The commission may inform the applicant that the commission may not be able to approve the application if it is not satisfied that the proposed activity will not pose a risk to public safety and the environment.

(e) A person who, on or before disposing of hazardous waste permit application in accordance dispose of hazardous waste except as provided by Section

Sec. 361.082. EVIDENCE OF the commission may hear testimony and record to show that proper

(b) If mailed notice to an affected party to the hearing shall be mailed to the affected person's address as shown on the mailing.

(c) The affidavit of the department of the notice, attesting that the

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Sec. 361.080. HEARING CONCERNING PERMIT APPLICATION FOR HAZARDOUS INDUSTRIAL SOLID WASTE FACILITY. A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(B) (part).)

Sec. 361.081. NOTICE OF HEARING CONCERNING APPLICATION FOR LANDFILL PERMIT. (a) The department shall give public notice of an opportunity for a hearing on an application for a landfill permit at least once each week for two consecutive weeks beginning not later than the 14th day from the last day allowed to request the hearing.

(b) The notice shall be published in the newspaper of the largest general circulation that is published in the county in which the proposed landfill will be located, unless a newspaper is not published in the county, in which case the notice shall be published in a newspaper of general circulation in the county.

(c) The department shall mail notice to each residence, business, and owner of real property located within one mile of the proposed landfill listed in the real property records of the county in which the landfill is sought to be permitted as of the date the department determines the permit application is administratively complete. The notice must be sent by certified or registered mail, return receipt requested, and be deposited with the United States postal service not more than 45 days or less than 30 days before the date of the hearing.

(d) The department shall presume that the notice requirements under Subsection (c) have been complied with on the applicant's verification to the department that the mailings were deposited as required by that subsection unless it is demonstrated by at least 35 percent of the affected parties that the applicant did not comply with that subsection.

(e) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the department and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(B), as amended by Ch. 781, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.082. APPLICATION FOR HAZARDOUS WASTE PERMIT; NOTICE AND HEARING. (a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing.

(d) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(e) A person who, on or before November 19, 1980, began on-site processing, storing, or disposing of hazardous waste under this section and who has filed a hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110. (V.A.C.S. Art. 4477-7, Sec. 4(f)(2).)

Sec. 361.083. EVIDENCE OF NOTICE OF HEARING. (a) Before the department or the commission may hear testimony in a contested case, evidence must be placed in the record to show that proper notice of the hearing was given to affected persons.

(b) If mailed notice to an affected person is required, the department, commission, or other party to the hearing shall place evidence in the record that notice was mailed to the affected person's address as shown by the appropriate county tax rolls at the time of the mailing.

(c) The affidavit of the department or commission employee responsible for the mailing of the notice, attesting that the notice was mailed to the address shown by the tax rolls at

the time of mailing, is prima facie evidence of proper mailing. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(C) (part).)

Sec. 361.084. COMPLIANCE SUMMARIES. (a) The board of health and the commission each by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities under each agency's jurisdiction.

(b) The compliance summaries shall be made available to the applicant and any interested person after the lead agency has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste facility permit with agency rules, permits, or other orders concerning solid waste management may be:

- (1) offered by a party at a hearing concerning the application; and
- (2) admitted into evidence subject to applicable rules of evidence.

(d) The agency shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit. (V.A.C.S. Art. 4477-7, Sec. 4(e)(11).)

Sec. 361.085. FINANCIAL ASSURANCE BY PERMIT APPLICANT. (a) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(b) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(c) An agency may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(d) The agency to which the application is submitted shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(e) Financial requirements established by the agency must at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(f) The department and the commission may each:

- (1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and
- (2) spend the funds from the financial assurance arrangement to close the facility.

(g) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the department or commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(h) In addition to other forms of financial assurance authorized by rules of the board of health or commission, the agency may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

- (1) a bank chartered by the state or the federal government; and
- (2) federally insured and its financial practices are regulated by the state or the federal government. (V.A.C.S. Art. 4477-7, Sec. 4(e)(5).)

Sec. 361.086. SEPARATE required for each solid waste

(b) A permit under this sub application is made and only

(c) A permit may not be tr written approval of the agenc (part), (7).)

Sec. 361.087. CONTENTS include:

(1) the name and address facility is located and the p the facility;

(2) a legal description of

(3) the terms and conditi the permit. (V.A.C.S. Art.

Sec. 361.088. PERMIT ISS NOTICE AND HEARING. (a renew a permit it issues in department or commission, as

(b) The procedures prescri application to amend, extend,

(c) Before a permit is issue application is submitted shall persons affected. The agency 4477-7, Secs. 4(e)(3), (4).)

Sec. 361.089. PERMIT AN ING. (a) The department or c issues for reasons pertaining violation of this chapter or o solid waste.

(b) Except as provided by each governmental entity list hearing to the permit holder also hold a hearing on its own

(c) The board of health and notice and any public hearing

(d) Hearings under this sec adopted by the department or tive Procedure and Texas Reg (V.A.C.S. Art. 4477-7, Sec. 4(e)

Sec. 361.090. REGULATIO ID WASTE DISPOSAL. (a) T for the collection, handling, sto is disposed of within the bour

(1) owned or otherwise e particular industrial plant, operation from which the w

(2) located within 50 mile industrial solid waste.

(b) This section does not ap

(1) waste collected, handl any other source or sources

(2) hazardous waste.

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Sec. 361.086. SEPARATE PERMIT FOR EACH FACILITY. (a) A separate permit is required for each solid waste facility.

(b) A permit under this subchapter may be issued only to the person in whose name the application is made and only for the facility described by the permit.

(c) A permit may not be transferred without first giving written notice to and receiving written approval of the agency that issued the permit. (V.A.C.S. Art. 4477-7, Secs. 4(e)(2) (part), (7).)

Sec. 361.087. CONTENTS OF PERMIT. A permit issued under this subchapter must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the permit is issued, including the duration of the permit. (V.A.C.S. Art. 4477-7, Sec. 4(e)(2) (part).)

Sec. 361.088. PERMIT ISSUANCE, AMENDMENT, EXTENSION, AND RENEWAL; NOTICE AND HEARING. (a) The department or the commission may amend, extend, or renew a permit it issues in accordance with reasonable procedures prescribed by the department or commission, as appropriate.

(b) The procedures prescribed by Section 361.067 for a permit application apply to an application to amend, extend, or renew a permit.

(c) Before a permit is issued, amended, extended, or renewed, the agency to which the application is submitted shall provide an opportunity for a hearing to the applicant and persons affected. The agency may also hold a hearing on its own motion. (V.A.C.S. Art. 4477-7, Secs. 4(e)(3), (4).)

Sec. 361.089. PERMIT AMENDMENT OR REVOCATION; NOTICE AND HEARING. (a) The department or commission may, for good cause, amend or revoke a permit it issues for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste.

(b) Except as provided by Section 361.110, the department or commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder and persons affected. The department or commission may also hold a hearing on its own motion.

(c) The board of health and the commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the department or commission and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4477-7, Sec. 4(e)(8).)

Sec. 361.090. REGULATION AND PERMITTING OF CERTAIN INDUSTRIAL SOLID WASTE DISPOSAL. (a) The commission may not require a permit under this chapter for the collection, handling, storage, processing, and disposal of industrial solid waste that is disposed of within the boundaries of a tract of land that is:

(1) owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; and

(2) located within 50 miles from the plant or operation that is the source of the industrial solid waste.

(b) This section does not apply to:

(1) waste collected, handled, stored, processed, or disposed of with solid waste from any other source or sources; or

(2) hazardous waste.

(c) This section does not change or limit any authority the commission may have concerning:

(1) the requirement of permits and the control of water quality, or otherwise, under Chapter 26, Water Code; or

(2) the authority under Section 361.303.

(d) The commission may adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this section applies to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

(e) The commission may require a person who disposes or plans to dispose of industrial solid waste and claims to be exempt under this section to submit to the commission information that is reasonably required to enable the commission to determine if this section applies to the waste disposal activity. (V.A.C.S. Art. 4477-7, Sec. 4(f)(1).)

Sec. 361.091. ENCLOSED CONTAINERS OR VEHICLES; PERMITS; INSPECTIONS; CRIMINAL PENALTY. (a) A solid waste site or operation permitted as a Type IV landfill may not accept solid waste that is in a completely enclosed container or enclosed vehicle unless:

(1) the solid waste is transported on a route approved by the department and designed to eliminate putrescible, hazardous, or infectious waste;

(2) the solid waste is delivered to the site or operation on a date and time designated and approved by the department to eliminate putrescible, hazardous, or infectious waste;

(3) the transporter possesses a special permit issued by the department that includes the approved route, date, and time; and

(4) a department inspector is present to verify that the solid waste is free of putrescible, hazardous, or infectious waste.

(b) The department may issue the special permit under this section and charge a reasonable fee to cover the costs of the permit. The board of health may adopt rules of procedure necessary to carry out the permit program.

(c) The department may employ one or more inspectors and other employees necessary to inspect and determine if Type IV landfills are free of putrescible, hazardous, or infectious waste. The department shall pay the compensation and expenses of inspectors and other necessary employees employed under this subsection, but the holders of Type IV landfill permits shall reimburse the department for the compensation and expenses as provided by this section.

(d) The department shall notify each holder of a Type IV landfill permit of the compensation and expenses that are required annually for the inspection of the landfills.

(e) The department shall hold a public hearing to determine the apportionment of the administration costs of the inspection program among the holders of Type IV landfill permits. After the hearing, the department shall equitably apportion the costs of the inspection program and issue an order assessing the annual costs against each permit holder. The department may provide for payments in installments and shall specify the date by which each payment must be made to the department.

(f) A holder of a permit issued under this section may not accept solid waste if the permit holder is delinquent in the payment of costs assessed under Subsection (e).

(g) The department's order assessing costs is effective until the department:

(1) modifies, revokes, or supersedes an order assessing costs with a subsequent order; or

(2) issues supplementary orders applicable to new Type IV landfill permits.

(h) The board of health may adopt rules necessary to carry out this section.

(i) An operator of a solid waste facility or a solid waste hauler commits an offense if the operator or hauler disposes of solid waste in a completely enclosed container or vehicle at a solid waste site or operation permitted as a Type IV landfill:

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(1) without having in

(2) on a date or time

(3) without a departmental order, putrescible, hazardous,

(j) An offense under th

(k) Penalties under thi

this chapter.

(l) This section does no

(1) a stationary comp

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infectious waste; or

(2) an enclosed vehic

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the vehicle are free of

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(1) be decomposed by

gases; or

(2) provide food for

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Sec. 361.092. PERMIT

WASTE FACILITIES. (a)

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inactive portions of a solid

industrial solid waste.

(b) The department or t

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(c) Each agency shall add

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Sec. 361.093. REGULA

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(b) If a rendering plant is

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(c) This section does not

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(d) In this section, "anima

4477-7, Sec. 4(e)(9).)

Sec. 361.094. PERMIT

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Sec. 361.095. APPLICAN

PERMIT EXEMPT FROM

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- (1) without having in possession the special permit required by this section;
- (2) on a date or time not authorized by the department; or
- (3) without a department inspector present to verify that the solid waste is free of putrescible, hazardous, and infectious waste.
- (j) An offense under this section is a Class B misdemeanor.
- (k) Penalties under this section are in addition to any other penalty applicable under this chapter.
- (l) This section does not apply to:

- (1) a stationary compactor that is at a specific location and that has an annual permit under this section issued by the department, on certification to the department by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or
- (2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the department to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the department that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.
- (m) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:
 - (1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or
 - (2) provide food for or attract birds, animals, or disease vectors. (V.A.C.S. Art. 4477-7, Sec. 4A, as added by Ch. 1119, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.092. PERMIT FOR EXTRACTING MATERIALS FROM CERTAIN SOLID WASTE FACILITIES. (a) The department and the commission may each require a permit to extract materials for energy and material recovery and for gas recovery from closed or inactive portions of a solid waste facility that has been used for disposal of municipal or industrial solid waste.

(b) The department or the commission shall issue a permit under this section in the same manner as provided by this subchapter for issuance of a permit to operate and maintain a solid waste facility.

(c) Each agency shall adopt standards necessary to ensure that the integrity of a solid waste facility is maintained. (V.A.C.S. Art. 4477-7, Sec. 4(j).)

Sec. 361.093. REGULATION AND PERMITTING OF RENDERING PLANTS. (a) A manufacturing or processing establishment, commonly known as a rendering plant, that processes waste materials originating from animals and from materials of vegetable origin, including animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin, is subject to regulation under the industrial solid waste provisions of this chapter and may be regulated under Chapter 26, Water Code.

(b) If a rendering plant is owned by a person who operates the plant as an integral part of an establishment that manufactures or processes for animal or human consumption food derived wholly or partly from dead, slaughtered, or processed animals, the combined business may operate under a single permit issued under Chapter 26, Water Code.

(c) This section does not apply to a rendering plant in operation and production on or before August 27, 1973.

(d) In this section, "animals" includes only animals, poultry, and fish. (V.A.C.S. Art. 4477-7, Sec. 4(e)(9).)

Sec. 361.094. PERMIT HOLDER EXEMPT FROM LOCAL LICENSE REQUIREMENTS. If a permit is issued, amended, renewed, or extended by the department or the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or from a county. (V.A.C.S. Art. 4477-7, Sec. 4(e)(6) (part).)

Sec. 361.095. APPLICANT FOR HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT EXEMPT FROM LOCAL PERMIT. (a) An applicant for a permit under this

subchapter is not required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state.

(b) A local government or other political subdivision of the state may not adopt a rule or ordinance that conflicts with or is inconsistent with the requirements for hazardous waste management facilities as specified by the rules of the commission or by a permit issued by the commission.

(c) In an action to enforce a rule or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d) The validity or applicability of a rule or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule or ordinance, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an application for or the issuance of a permit for the siting, construction, or operation of a hazardous waste management facility.

(e) The local government or other political subdivision whose rule or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and the commission may become a party to the action.

(f) A declaratory judgment may be rendered even if the plaintiff has requested the commission, the local government or political subdivision, or another court to determine the validity or applicability of the rule or ordinance in question. (V.A.C.S. Art. 4477-7, Sec. 4(e)(6) (part).)

Sec. 361.096. EFFECT ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) Except as specifically provided by this chapter, this subchapter does not limit the powers and duties of a local government or other political subdivision of the state as conferred by this or other law.

(b) Sections 361.094 and 361.095 do not affect the power of a local government or other political subdivision to adopt or enforce building codes. (V.A.C.S. Art. 4477-7, Sec. 4(e)(6) (part).)

Sec. 361.097. CONDITION ON ISSUANCE OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall condition the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on the selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.098. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE LANDFILL IN 100-YEAR FLOODPLAIN. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.099. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT UNIT IN WETLANDS. (a) The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the unit is to be located in wetlands, as defined by the commission.

(b) In this section and Section 361.100, "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility used to manage hazardous waste. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.100. PROHIBITION ON PERMIT FOR CERTAIN HAZARDOUS WASTE MANAGEMENT UNITS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit if the landfill:

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(1) is in a floodplain of flooding in any Management Agency

(2) receives hazardous waste

Sec. 361.101. PROHIBITION ON PERMIT FOR A NEW HAZARDOUS WASTE PILE, OR AREAL EXPANSION OF SUCH A PILE, OR AREAL RECHARGE ZONE OF A SOIL

Sec. 361.102. PROHIBITION ON PERMIT FOR A NEW RESIDENCE, CHURCH, OR OTHER BUILDING. The commission by rule shall prohibit the issuance of a permit for the areal expansion of such a building if the building is to be located within a public park that is in a floodplain

(1) when the notice of intent to issue a permit is given

(2) if no notice of intent to issue a permit is given

Sec. 361.103. OTHER PROHIBITIONS. The commission by rule shall prohibit the issuance of a permit for the areal expansion of such a building if the building is to be located within a public park that is in a floodplain

(1) flood hazards;

(2) discharge from

(3) soil conditions;

(4) areas of direct surface water;

(5) active geological

(6) coastal high water shoreline erosion; or

(7) critical habitat

Sec. 361.104. PROHIBITION ON PERMIT FOR A NEW HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility if the facility is to be located in an area that is unsuitable under rules of the commission for design, construction, and operation

Sec. 361.105. PETITION FOR PERMIT FOR A NEW HAZARDOUS WASTE MANAGEMENT FACILITY IN A FLOODPLAIN. A local government or other political subdivision may petition the commission for a permit for a new hazardous waste management facility in an area included in a floodplain

Sec. 361.106. PETITION FOR PERMIT FOR A NEW HAZARDOUS WASTE MANAGEMENT FACILITY IN A FLOODPLAIN. A local government or other political subdivision may petition the commission for a permit for a new hazardous waste management facility in an area included in a floodplain

(b) A rule adopted under this chapter shall not require a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility if the facility is to be located in an area that is unsuitable under rules of the commission for design, construction, and operation

Sec. 361.106. PROHIBITION ON PERMIT FOR A NEW HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility if the facility is to be located in an area that is unsuitable under rules of the commission for design, construction, and operation

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(1) is in a floodplain of a perennial stream subject to not less than one percent chance of flooding in any year, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1983, as zone A1-99, V0, or V1-30; and

(2) receives hazardous waste for a fee. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.101. PROHIBITION ON PERMIT FOR FACILITY ON RECHARGE ZONE OF SOLE SOURCE AQUIFER. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill, land treatment facility, surface impoundment, or waste pile, or areal expansion of such a facility, if the facility is to be located on the recharge zone of a sole source aquifer. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.102. PROHIBITION ON PERMIT FOR FACILITY WITHIN 1,000 FEET OF RESIDENCE, CHURCH, SCHOOL, OR PARK. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, or dedicated public park that is in use:

- (1) when the notice of intent to file a permit application is filed with the commission;
- (2) if no notice of intent is filed, when the permit application is filed with the commission. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.103. OTHER AREAS UNSUITABLE FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall define the characteristics that make other areas unsuitable for a hazardous waste management facility, including consideration of:

- (1) flood hazards;
- (2) discharge from or recharge to a groundwater aquifer;
- (3) soil conditions;
- (4) areas of direct drainage within one mile of a lake used to supply public drinking water;
- (5) active geological processes;
- (6) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or
- (7) critical habitat of endangered species. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.104. PROHIBITION ON PERMIT FOR FACILITY IN UNSUITABLE AREA. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the commission under Section 361.103 unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.105. PETITION BY LOCAL GOVERNMENT FOR RULE ON HAZARDOUS WASTE FACILITY IN UNSUITABLE AREA. (a) The commission by rule shall allow a local government to petition the commission for a rule that restricts or prohibits the siting of a new hazardous waste disposal facility or other new hazardous waste management facility in an area including an area meeting one or more of the characteristics described by Section 361.103.

(b) A rule adopted under this section may not affect the siting of a new hazardous waste disposal facility or other new hazardous waste management facility if an application or a notice of intent to file an application concerning the facility is filed with the commission before the filing of a petition under this section. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.106. PROHIBITION ON PERMIT FOR LANDFILL IF ALTERNATIVE EXISTS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to the landfill that is reasonably

available to manage the types and classes of hazardous waste that might be disposed of at the landfill. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.107. **HYDROGEOLOGIC REPORT FOR CERTAIN HAZARDOUS WASTE FACILITIES.** The commission by rule shall require an applicant for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.108. **ENGINEERING REPORT FOR HAZARDOUS WASTE LANDFILL.** The commission by rule shall require an applicant for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering report evaluating:

(1) the benefits, if any, associated with constructing the landfill above existing grade at the proposed site; -

(2) the costs associated with the above grade construction; and

(3) the potential adverse effects, if any, that would be associated with the above grade construction. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.109. **GRANT OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY.** The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

(1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;

(2) the applicant for a proposed hazardous waste management facility not located in an area of industrial land use has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be reasonably minimized or mitigated; and

(3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed. (V.A.C.S. Art. 4477-7, Sec. 4(e)(13).)

Sec. 361.110. **TERMINATION OF AUTHORIZATION OR PERMIT.** Authorization to store, process, or dispose of hazardous waste under Section 361.082 or under a solid waste permit issued under this subchapter that has not been reissued in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), terminates as follows:

(1) in the case of each land disposal facility, on November 8, 1985, unless the facility owner or operator applied for a final determination concerning the issuance of a permit before that date and certified that the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements;

(2) in the case of each incinerator facility, on November 8, 1989, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1985; or

(3) in the case of any other solid waste facility, on November 8, 1992, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1988. (V.A.C.S. Art. 4477-7, Sec. 4(f).)

[Sections 361.111-361.130 reserved for expansion]

SUBCHAPTER D. HAZARDOUS WASTE GENERATION, FACILITY, AND DISPOSAL; FEES AND FUNDS

Sec. 361.131. **DEFINITIONS.** In this subchapter:

(1) "Dry weight" means the weight of constituents other than water.

(2) "Generator of hazard process produces hazardous regulated by the commiss

(3) "Hazardous waste" listed as hazardous waste Protection Agency under et seq.) as of August 26,

(4) "Land disposal" doe

(A) the normal applic

(B) disposal of hazar inactive hazardous waste issued after August 26,

(5) "Land disposal facil

(A) a landfill;

(B) a surface impoun that is disposed of unde

(C) a waste pile;

(D) a facility at whic

(E) an injection well.

(6) "Primary metals hi extraction, beneficiation, constituents are subject t waste under Section 3001(U.S.C. Section 6901 et se volume. (V.A.C.S. Art. 44

Sec. 361.132. **HAZARD**

(a) The hazardous waste

(b) The fund consists of

(1) fees imposed on har waste facilities for proces 361.134 and 361.135; and

(2) interest and penalti ous waste generation or

(c) The commission may waste, including payment concerning enforcement of

(d) The total amount of h deposited to the credit of th year may not be less than. Secs. 11a(a) (part), (b); 120

Sec. 361.133. **HAZARD waste disposal fee fund is**

(b) The fund consists of

(1) fees imposed on th waste under Section 361

(2) interest and penal disposal fee or late filing

(3) money paid by a Subchapter F.

(c) The commission may under this section only for

(2) "Generator of hazardous waste" or "generator" means a person whose act or process produces hazardous waste or whose act first causes a hazardous waste to be regulated by the commission.

(3) "Hazardous waste" means solid waste not otherwise exempt that is identified or listed as hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) as of August 26, 1985.

(4) "Land disposal" does not include:

(A) the normal application of agricultural chemicals or fertilizers; or

(B) disposal of hazardous waste retrieved or created due to remediation of an inactive hazardous waste disposal facility for which a federal or state permit is not issued after August 26, 1985.

(5) "Land disposal facility" includes:

(A) a landfill;

(B) a surface impoundment, excluding an impoundment treating or storing waste that is disposed of under Chapter 26 or 27, Water Code;

(C) a waste pile;

(D) a facility at which land farming or a land application process is used; and

(E) an injection well.

(6) "Primary metals high volume, low-hazard waste" is hazardous waste from the extraction, beneficiation, and processing of ores, minerals, or scrap metal and whose constituents are subject to the criteria for the identification or listing as a hazardous waste under Section 3001(a) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and account for 10 percent or less of its total dry weight volume. (V.A.C.S. Art. 4477-7, Sec. 12(a).)

Sec. 361.132. HAZARDOUS WASTE GENERATION AND FACILITY FEES FUND.

(a) The hazardous waste generation and facility fees fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

(1) fees imposed on hazardous waste generation and permitted or interim status solid waste facilities for processing, storing, or disposing of hazardous waste under Sections 361.134 and 361.135; and

(2) interest and penalties imposed under Section 361.137 for late payment of hazardous waste generation or facility fees.

(c) The commission may use the money in the fund only for regulation of hazardous waste, including payment to other state agencies for services provided under contract concerning enforcement of this chapter.

(d) The total amount of hazardous waste generation fees and facility fees collected and deposited to the credit of the hazardous waste generation and facility fees fund in a fiscal year may not be less than \$3.5 million or more than \$4.5 million. (V.A.C.S. Art. 4477-7, Secs. 11a(a) (part), (b); 12(b) (part), (c) (part).)

Sec. 361.133. HAZARDOUS WASTE DISPOSAL FEE FUND. (a) The hazardous waste disposal fee fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

(1) fees imposed on the operator of a solid waste facility for disposal of hazardous waste under Section 361.135;

(2) interest and penalties imposed under Section 361.137 for late payment of a disposal fee or late filing of a report; and

(3) money paid by a person liable for facility cleanup and maintenance under Subchapter F.

(c) The commission may use the money collected and deposited to the credit of the fund under this section only for:

(1) necessary and appropriate removal and remedial action at sites at which hazardous waste or hazardous substances have been disposed if funds from a liable person, independent third person, or the federal government are not sufficient for the removal or remedial action;

(2) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if:

(A) funds from a liable person have been collected and deposited to the credit of the fund for that purpose; or

(B) funds from a liable person, independent third person, or the federal government are not sufficient for the maintenance; and

(3) expenses concerning compliance with:

(A) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

(B) the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(C) Subchapters F and I. (V.A.C.S. Art. 4477-7, Secs. 11a(a) (part), (c), (d), 12(d) (part).)

Sec. 361.134. HAZARDOUS WASTE GENERATION FEE. (a) The annual hazardous waste generation fee prescribed by this section is imposed on each generator of hazardous waste who generates hazardous waste during any part of the year.

(b) The commission shall:

(1) require each generator of hazardous waste to register its activities; and

(2) collect the annual hazardous waste generation fee imposed under this section.

(c) The commission by rule shall adopt a generation fee schedule for use in determining the amount of fees to be charged. The annual generation fee may not be less than \$50 or more than \$15,000.

(d) A generator of less than 100 kilograms of hazardous waste each month is exempt from the payment of a generation fee under this section. (V.A.C.S. Art. 4477-7, Sec. 12(b) (part).)

Sec. 361.135. HAZARDOUS WASTE FACILITY FEE. (a) The annual facility fee is imposed on each facility that holds one or more permits or is operating a hazardous waste management unit subject to permit authorization to process, store, or dispose of hazardous waste during any part of the year.

(b) The commission by rule shall adopt a facility fee schedule for determining the amount of each annual fee to be charged. In adopting the schedule, the commission shall consider:

(1) the permitted capacity of facilities; and

(2) variations in the costs necessary to regulate different types of facilities.

(c) The annual facility fee may not be less than \$250. The maximum fee for a facility may not exceed \$25,000. The annual fee to be charged each hazardous waste facility must be that set by the fee schedule adopted by the commission.

(d) The commission shall collect the facility fee imposed under this section.

(e) During a year in which a facility subject to interim status requirements receives a final permit, the facility fee under this section may be imposed only on one of those classifications. (V.A.C.S. Art. 4477-7, Sec. 12(c) (part).)

Sec. 361.136. HAZARDOUS WASTE DISPOSAL FEE. (a) A fee for each dry weight ton of hazardous waste deposited in a land disposal facility is imposed on the operator of a hazardous waste land disposal facility.

(b) The commission by rule shall:

(1) set the fee for each dry weight ton of hazardous waste, as provided by Subsection (e); and

(2) provide for methods of computing the dry weight of hazardous waste.

(c) The amount of the percent of the amount of

(d) The generator of ha

(1) of the computation disposed of; or

(2) that the composite metals high volume, low low-hazard waste.

(e) The commission by r weight of small volumes disposal facilities for which disproportionate.

(f) The commission by r necessary so that the am million and \$12 million or

(g) In setting a different a biennium, the legislature

(1) the amount necess under the federal Compr Act of 1980 (42 U.S.C. Se and Reauthorization Act

(2) the cost of state-fu

(h) If during the bienn federal funds under the fed (10 U.S.C. Section 2701 et necessary matching funds.

(i) The commission shall established by rule. (V.A.

Sec. 361.137. INTERES percent of the amount of a accrues from the date on v

(b) A person is subject to failure to timely submit a r

(c) Interest collected und shall be deposited in the st and facility fees fund.

(d) Interest and penalties and late filing of reports a hazardous waste disposal f

[Section]

SUBCHAPTER E. F

Sec. 361.151. RELATIO TY. (a) Each county has t subchapter.

(b) The exercise of the lic chapter does not preclude t vested in the department including the provisions aut to construct, operate, and m

(c) The department and jurisdiction, by specific acti exercised by a county un

(c) The amount of the fee for primary metals high volume, low-hazard waste is 25 percent of the amount of the fee set under Subsection (b)(1).

(d) The generator of hazardous waste shall provide certification:

(1) of the computation to the operator of the dry weight of the hazardous waste to be disposed of; or

(2) that the composition of the industrial solid waste meets the definition of a primary metals high volume, low-hazard waste, in the case of primary metals high volume, low-hazard waste.

(e) The commission by rule may provide for a method to determine or estimate the dry weight of small volumes of hazardous waste delivered to commercial hazardous waste disposal facilities for which costs of analyzing the waste to determine dry weight are disproportionate.

(f) The commission by rule shall set the hazardous waste disposal fee and revise it as necessary so that the amount of money collected each biennium equals between \$10 million and \$12 million or an amount set by legislative appropriation.

(g) In setting a different amount by legislative appropriation to be raised in fees during a biennium, the legislature shall consider only:

(1) the amount necessary to raise the required state matches for remedial actions under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(2) the cost of state-funded remedial actions under Subchapter F.

(h) If during the biennium additional funds are necessary to match newly available federal funds under the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.), the commission may increase the fee to collect the necessary matching funds.

(i) The commission shall collect the hazardous waste disposal fee quarterly on dates established by rule. (V.A.C.S. Art. 4477-7, Sec. 12(d) (part).)

Sec. 361.187. INTEREST AND PENALTIES. (a) Interest at an annual rate of 15 percent of the amount of a fee due under Section 361.184, 361.185, or 361.186 and unpaid accrues from the date on which the fee is due.

(b) A person is subject to a civil penalty of \$100 for each day the violation continues for failure to timely submit a report as required by commission rule under Section 361.635.

(c) Interest collected under this section for late payment of generation or facility fees shall be deposited in the state treasury to the credit of the hazardous waste generation and facility fees fund.

(d) Interest and penalties collected under this section for late payment of disposal fees and late filing of reports shall be deposited in the state treasury to the credit of the hazardous waste disposal fee fund. (V.A.C.S. Art. 4477-7, Sec. 14a.)

[Sections 361.188-361.150 reserved for expansion.]

SUBCHAPTER E. POWERS AND DUTIES OF LOCAL GOVERNMENTS

Sec. 361.151. RELATIONSHIP OF COUNTY AUTHORITY TO STATE AUTHORITY. (a) Each county has the solid waste management powers prescribed under this subchapter.

(b) The exercise of the licensing authority and other powers granted to a county by this chapter does not preclude the department or the commission from exercising the powers vested in the department or the commission under other provisions of this chapter, including the provisions authorizing the department and the commission to issue a permit to construct, operate, and maintain a facility to process, store, or dispose of solid waste.

(c) The department and the commission, each acting within its separate scope of jurisdiction, by specific action or directive, may supersede any authority granted to or exercised by a county under this chapter. (V.A.C.S. Art. 4477-7, Sec. 5(a) (part).)

Sec. 361.152. LIMITATION ON COUNTY POWERS CONCERNING INDUSTRIAL SOLID WASTE. The powers specified by Sections 361.154-361.162 and Sections 364.011 and 364.012 (County Solid Waste Control Act) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Section 361.090 applies. (V.A.C.S. Art. 4477-7, Sec. 5(a) (part).)

Sec. 361.153. COUNTY SOLID WASTE PLANS AND PROGRAM; FEES. A county may:

(1) appropriate and spend money from its general revenues to manage solid waste and to administer a solid waste program and may charge reasonable fees for those services; and

(2) develop county solid waste plans and coordinate those plans with the plans of local governments, regional planning agencies, other governmental entities, the department, and the commission. (V.A.C.S. Art. 4477-7, Secs. 5(b), (c).)

Sec. 361.154. COUNTY LICENSING AUTHORITY. (a) Except as provided by Sections 361.151 and 361.152, a county may require and issue licenses authorizing and governing the operation and maintenance of facilities used to process, store, or dispose of solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(b) If a county exercises licensing authority, it shall adopt and enforce rules for the management of solid waste. The rules must be:

(1) compatible with and not less stringent than those of the board of health or the commission, as appropriate; and

(2) approved by the department or the commission, as appropriate.

(c) Sections 361.155-361.161 apply if a county exercises licensing authority under this section. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.155. COUNTY NOTIFICATION OF LICENSE APPLICATION TO STATE AGENCIES. The county shall mail a copy of each license application with pertinent supporting data to the department, the commission, and the Texas Air Control Board. Each agency has at least 60 days to submit comments and recommendations on the license application before the county may act on the application unless that privilege is waived by the affected agency. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.156. SEPARATE LICENSE FOR EACH FACILITY. (a) A county shall issue a separate license for each solid waste facility.

(b) A license under this subchapter may be issued only to the person in whose name the application is made and only for the facility described in the license.

(c) A license may not be transferred without prior notice to and approval by the county that issued it. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.157. CONTENTS OF LICENSE. A license for a solid waste facility issued by a county must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the license is issued, including the duration of the license. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.158. LICENSE FEE. (a) A county may charge a license fee not to exceed \$100, as set by the commissioners court of the county.

(b) The fees shall be deposited to the credit of the county's general fund. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.159. LICENSE ISSUANCE, AMENDMENT, EXTENSION, AND RENEWAL. (a) A county may amend, extend, or renew a license it issues in accordance with county rules.

HEALTH AND SAFETY

(b) The procedures to extend, or renew a license.

(c) A license for the use of a facility may be issued, amended, renewed, or extended by the commission, as appropriate.

Sec. 361.160. LICENSE. A license for a facility specified by Section 361.154 shall include:

(1) public health;

(2) air or water pollution;

(3) land use; or

(4) a violation of the rules of the department, processing, storage, or disposal.

(b) For similar reasons, a license for a facility outside the separate scope of jurisdiction of the county, after hearing with the county, shall include:

(1) the license holder;

(2) the county that issued the license;

(3) the other state agency that issued the license; and

5(d) (part).)

Sec. 361.161. PERMIT. A permit for a facility specified by Section 361.154-361.160, the owner of which is located outside the territorial limits of the county, shall include:

(a) the name and address of each person who owns the land on which the facility is located and the person who is or will be the operator or person in charge of the facility; and

(b) The county shall base its decision on the permit application on the welfare, including proper use of the land, and other factors. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.162. DESIGN. A design for a facility not in the territorial limits of the county, after hearing with the county, shall include:

(a) the name and address of each person who owns the land on which the facility is located and the person who is or will be the operator or person in charge of the facility; and

(b) The county shall base its decision on the design application on the welfare, including proper use of the land, and other factors. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.163. COOPERATION. A county may enter into cooperative agreements with other political entities to jointly manage solid waste facilities. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.164. ENFORCEMENT. A county may adopt by the board of health rules for the enforcement of the provisions of this chapter. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.165. POLITICAL SUBDIVISIONS. (a) The powers of a political subdivision shall include:

(1) has jurisdiction of the territory over which it exercises its powers;

(2) has been granted the powers of a political subdivision by the legislature;

(b) The governing body of a political subdivision may exercise the same powers as a political subdivision in the exercise of the duties, limitations, and restrictions imposed on it by the legislature.

(b) The procedures prescribed by Section 361.155 apply to an application to amend, extend, or renew a license.

(c) A license for the use of a facility to process, store, or dispose of solid waste may not be issued, amended, renewed, or extended without the prior approval of the department or the commission, as appropriate. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.160. LICENSE AMENDMENT AND REVOCATION. (a) A county may, for good cause, after hearing with notice to the license holder and to the state agencies specified by Section 361.155, revoke or amend a license it issues for reasons concerning:

- (1) public health;
- (2) air or water pollution;
- (3) land use; or
- (4) a violation of this chapter or of other applicable laws or rules controlling the processing, storage, or disposal of solid waste.

(b) For similar reasons, the department and the commission, each acting within its separate scope of jurisdiction, may for good cause amend or revoke a license issued by a county, after hearing with notice to:

- (1) the license holder;
- (2) the county that issued the license; and
- (3) the other state agencies specified by Section 361.155. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.161. PERMIT FROM DEPARTMENT OR COMMISSION NOT REQUIRED. If a county issues, amends, renews, or extends a license in accordance with Sections 361.154-361.160, the owner or operator of the facility is not required to obtain a permit from the department or the commission for the same facility. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.162. DESIGNATION OF AREAS SUITABLE FOR FACILITIES. (a) Subject to the limitation under Sections 361.151 and 361.152, a county may designate land areas not in the territorial limits or extraterritorial jurisdiction of a municipality as suitable for use as solid waste facilities.

(b) The county shall base a designation on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and other pertinent factors. (V.A.C.S. Art. 4477-7, Sec. 5(e).)

Sec. 361.163. COOPERATIVE AGREEMENTS WITH LOCAL GOVERNMENTS. A county may enter into cooperative agreements with local governments and other governmental entities to jointly operate solid waste management activities and to charge reasonable fees for the services. (V.A.C.S. Art. 4477-7, Sec. 5(h).)

Sec. 361.164. ENFORCEMENT. A county may enforce this chapter and the rules adopted by the board of health and the commission concerning the management of solid waste. (V.A.C.S. Art. 4477-7, Sec. 5(f).)

Sec. 361.165. POLITICAL SUBDIVISIONS WITH JURISDICTION IN TWO OR MORE COUNTIES. (a) This section applies to a political subdivision of the state that:

- (1) has jurisdiction of territory in more than one county; and
- (2) has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities in its jurisdiction.

(b) The governing body of the political subdivision may, by resolution, assume for the political subdivision the exclusive authority to exercise, in the area subject to its jurisdiction, the powers granted by this chapter to a county, to the exclusion of the exercise of the same powers by the counties otherwise having jurisdiction over the area.

(c) In the exercise of those powers, the political subdivision is subject to the same duties, limitations, and restrictions applicable to a county under this chapter.

(d) A political subdivision that assumes the authority granted under this section:

(1) serves as the coordinator of all solid waste management practices and activities for municipalities, counties, and other governmental entities in its jurisdiction that have solid waste management regulatory powers or engage in solid waste management practices or activities; and

(2) shall exercise the authority as long as the resolution of the political subdivision is effective. (V.A.C.S. Art. 4477-7, Sec. 6.)

Sec. 361.166. MUNICIPAL RESTRICTIONS. A municipality may not abolish or restrict the use or operation of a solid waste facility in its limits or extraterritorial jurisdiction if the solid waste facility:

(1) was in existence when the municipality was incorporated or was in existence when the municipality annexed the area in which it is located; and

(2) is operated in substantial compliance with applicable state and county regulations. (V.A.C.S. Art. 4477-7, Sec. 6a(a).)

Sec. 361.167. OPERATION OF FACILITY BY POLITICAL SUBDIVISION. A municipality or other political subdivision operating a solid waste facility may not be prevented from operating the solid waste facility on the ground that the facility is located in the limits or extraterritorial jurisdiction of another municipality. (V.A.C.S. Art. 4477-7, Sec. 6(b).)

[Sections 361.168-361.180 reserved for expansion]

SUBCHAPTER F. REGISTRY AND CLEANUP OF CERTAIN HAZARDOUS WASTE FACILITIES

Sec. 361.181. REGISTRY. (a) The commission shall publish a registry:

(1) identifying each facility listed by the survey required under Section 12, Chapter 566, Acts of the 69th Legislature, Regular Session, 1985;

(2) assigning the relative priority of the need for action at each facility to remedy environmental and health problems resulting from the presence of hazardous waste at those facilities; and

(3) recommending actions to achieve effective, efficient, and timely cleanup or other resolution of the problems identified for each facility.

(b) A recommendation under Subsection (a)(3) is not the remedial investigation and feasibility study for the relevant facility but must form the basis for the study. (V.A.C.S. Art. 4477-7, Sec. 13(a) (part).)

Sec. 361.182. INVESTIGATION OF FACILITIES LISTED IN REGISTRY. The commission may, in accordance with Section 361.032, investigate:

(1) facilities listed in the registry; and

(2) areas or sites that it has reason to believe should be included in the registry. (V.A.C.S. Art. 4477-7, Sec. 13(b)(1).)

Sec. 361.183. RELATIVE PRIORITY FOR ACTION AT EACH FACILITY LISTED IN REGISTRY. The commission shall, in cooperation with the department and as part of the registry, reassess by January 1 of each year the relative priority of the need for action at each facility listed in the registry to remedy environmental and health problems resulting from the presence of hazardous waste at those facilities. The reassessments shall be made according to new information received from public hearings and other sources. (V.A.C.S. Art. 4477-7, Sec. 13(b)(2).)

Sec. 361.184. REVISION OF REGISTRY; FILING NOTICE. The commission shall:

(1) revise the registry periodically to:

(A) add facilities that may be an imminent and substantial endangerment to public health and safety or the environment; and

(B) delete facilities that have been cleaned up under this subchapter or removed from the registry under Section 361.186; and

(2) file an affidavit that the facility is located in the registry. (V.A.C.S. Art. 4477-7, Sec. 361.185. NO.

notify in writing any area that is not listed in the registry.

(b) The notice must be signed by a responsible person at the revised registry is

(c) The notice must be filed with the commission. Section 361.187.

(d) The failure to register a facility does not affect the validity of the facility. (V.A.C.S. Art. 4477-7, Sec. 361.186. REQU

a facility or other name in the registry of the commission setting forth the grounds for request the commission

(1) delete the facility;

(2) modify the facility;

(3) modify information.

(b) The commission by review of requests submitted under Section 361.187, Secs. 13(e)(4), (5)

Sec. 361.187. CHANGE. A facility may not substantially change without notifying the commission.

(b) The commission by definition:

(1) the erection of a

(2) the use of the facility

(3) the paving of the

(4) the creation of a facility.

(c) The notice under Sub

(1) be in writing and

(2) include a brief description

(3) be submitted at least 60 days before construction occurs or, if

of use, at least 60 days before

(d) The executive director shall

(1) interfere with significant remedial action

(2) expose the environment to

harm. (V.A.C.S. Art. 4477-7, Sec. 361.188. CLEANUP

cleanup of a facility identified

(2) file an affidavit or notice in the real property records of the county in which a facility is located identifying those facilities included in and deleted from the registry. (V.A.C.S. Art. 4477-7, Secs. 13(c), (d).)

Sec. 361.185. NOTICE OF INCLUSION IN REGISTRY. (a) The commission shall notify in writing any person identified as responsible for all or any part of a facility or area that is not listed in the registry of the contemplated addition of the facility or area in the registry.

(b) The notice must be sent by certified mail, return receipt requested, to each named responsible person at the person's last known address not later than two months before the revised registry is published.

(c) The notice must include a description of the duties and restrictions imposed by Section 361.187.

(d) The failure to receive a notice mailed to a named responsible person under this section does not affect the responsibilities, duties, or liabilities imposed on the person. (V.A.C.S. Art. 4477-7, Secs. 13(e)(1) (part), (2), (3).)

Sec. 361.186. REQUEST FOR CHANGE IN REGISTRY. (a) An owner or operator of a facility or other named person responsible for a facility listed or to be listed in the registry of the commission under this subchapter may, by submitting a written statement setting forth the grounds of the request in the form as the commission may require, request the commission to:

- (1) delete the facility from the registry;
- (2) modify the facility's priority in the registry; or
- (3) modify information concerning the facility.

(b) The commission by rule shall establish procedures, including public hearings, for review of requests submitted under this section to delete a facility. (V.A.C.S. Art. 4477-7, Secs. 13(e)(4), (5) (part).)

Sec. 361.187. CHANGE IN USE OF FACILITY LISTED IN REGISTRY. (a) A person may not substantially change the manner in which a facility listed in the registry is used without notifying the commission and receiving the commission's written approval for the change.

(b) The commission by rule shall define a substantial change of use and include in the definition:

- (1) the erection of a building or other structure at the facility and similar actions;
- (2) the use of the facility for agricultural production;
- (3) the paving of the facility for use as a roadway or parking lot; and
- (4) the creation of a park or other public or private recreational facility on the facility.

(c) The notice under Subsection (a) must:

- (1) be in writing and addressed to the executive director;
- (2) include a brief description of the proposed change of use; and
- (3) be submitted at least 60 days before the day physical alteration of the land or construction occurs or, if no alteration or construction is required to initiate the change of use, at least 60 days before the date of change of use.

(d) The executive director may not approve a change of use under this section if the new use will:

- (1) interfere significantly with a proposed, ongoing, or completed hazardous waste facility remedial action program at the facility; or
- (2) expose the environment or public health to a significantly increased threat of harm. (V.A.C.S. Art. 4477-7, Secs. 13(f)(1), (2).)

Sec. 361.188. CLEANUP OF CERTAIN HAZARDOUS WASTE FACILITIES. The cleanup of a facility identified under Section 361.181 by the commission in the registry

and that is an imminent and substantial endangerment to the public health and safety or the environment shall be expedited. (V.A.C.S. Art. 4477-7, Sec. 13(g)(1) (part).)

Sec. 361.189. PRIORITY OF USE OF FUNDS FOR CLEANUP. (a) Payment for cleanup of a facility identified in the registry shall be made in the following order:

- (1) by private funding;
 - (2) by federal funding; and
 - (3) by state funding from the hazardous waste permit and disposal fee, if approved by the legislature.
- (b) If voluntary assistance from private sources is not available, federal funds must be used for facility cleanup if those funds are available when needed.

(c) State funds may be used only if funds from a liable person, an independent third person, or the federal government are not available when needed. (V.A.C.S. Art. 4477-7, Secs. 13(a) (part), (g)(1) (part).)

Sec. 361.190. IMMEDIATE REMOVAL ACTION; RECOVERY OF COSTS. (a) The commission may, with the funds available to the commission from the hazardous waste permit and disposal fees if approved by the legislature, undertake immediate removal action at a facility to alleviate irreversible or irreparable harm, if the commission after an investigation finds that:

(1) a release or threatened release of hazardous waste that is causing irreversible or irreparable harm to the public health and safety or the environment exists at a facility identified by the registry; and

(2) the immediacy of the situation makes it prejudicial to the public interest to delay action until:

(A) an administrative order can be issued to a person liable under Section 361.191; or

(B) a judgment can be entered in an appeal of an administrative order.

(b) Findings required under Subsection (a) must be made in writing and may be made ex parte. The findings are subject to judicial review under the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-16a, Vernon's Texas Civil Statutes).

(c) The reasonable expenses of immediate removal action taken by the commission under this section may be recovered from a person identified as liable under Subchapter 1. The state may seek to recover the reasonable expenses in a court of appropriate jurisdiction. (V.A.C.S. Art. 4477-7, Sec. 13(g)(3) (part).)

Sec. 361.191. ADMINISTRATIVE ORDER CONCERNING FACILITY LISTED IN REGISTRY. (a) If the commission finds that there exists an actual or threatened release of hazardous waste at a hazardous waste facility listed in the registry that presents an imminent and substantial endangerment to the public health and safety or the environment, or after any immediate danger of irreversible or irreparable harm is alleviated under Section 361.190, the commission may issue an administrative order to:

- (1) the owner or operator of the facility;
- (2) any other person responsible for the release of hazardous waste or a threatened release at the facility; or
- (3) each of the persons under Subdivisions (1) and (2).

(b) The order may require a person liable under Subchapter 1 to:

- (1) develop a remedial action program at the facility, subject to the commission's approval; and
- (2) implement the program within a reasonable time specified by the order.

The provisions of Subchapters I, K, and L concerning administrative orders apply to an order issued under this section. (V.A.C.S. Art. 4477-7, Secs. 13(g)(2), (3) (part).)

Sec. 361.192. VOLUNTARY ACTION. (a) A person identified as liable under Section 361.189 shall be given the opportunity to participate voluntarily in a remedial action program for the facility.

(b) If all persons liable under Section 361.189 are not participating in cleanup activities, the commission may, under Section 361.344 from liable persons, develop a remedial action program for the facility.

(c) If no persons liable under Section 361.189 are participating in the cleanup of the facility, the commission may, under Section 361.344 from liable persons who do not participate, develop a remedial action program for the facility. (V.A.C.S. Art. 4477-7, Sec. 13(g)(1) (part).)

Sec. 361.193. REMEDIAL ACTION OF RESPONSIBLE PERSON. (a) The commission may develop a remedial action program for a facility if:

(1) a person ordered to eliminate the release of hazardous waste to the public health and safety or the environment by the order; and

(2) no third person agrees to develop and implement a remedial action program for the facility under Section 361.192.

(b) Persons to whom the order is issued shall be responsible for those reasonable expenses in a remedial action program for the facility.

(c) An action instituted by the commission under this section shall be subject to the provisions of Subchapter I, K, and L. (V.A.C.S. Art. 4477-7, Sec. 13(g)(1) (part).)

Sec. 361.194. REMEDIAL ACTION OF RESPONSIBLE PERSON. (a) The commission may develop a remedial action program for a facility identified in the registry if:

(1) the commission finds that there exists an actual or threatened release of hazardous waste that presents an imminent and substantial endangerment to the public health and safety or the environment; and

(2) after a reasonable attempt to develop and implement a remedial action program for the facility, the commission finds that the release of hazardous waste to the public health and safety or the environment is continuing.

(b) The commission shall determine who may be responsible for the release of hazardous waste to the public health and safety or the environment.

(c) The commission shall locate a person who may be responsible for the release of hazardous waste to the public health and safety or the environment.

(d) The commission shall develop a remedial action program for the facility under this section.

(e) Federal funds shall be used to develop and implement a remedial action program for the facility when needed in accordance with the provisions of this section.

(f) The commission shall make a determination of the feasibility of a remedial action program for the facility subsequently identified or located by the commission at the facility.

(g) The commission shall determine the cost of developing and implementing a remedial action program for the facility.

(h) The commission shall determine the payment of the cost of developing and implementing a remedial action program for the facility.

(i) The commission shall determine the reasonable expenses incurred by a person responsible for the release of hazardous waste to the public health and safety or the environment.

Sec. 361.195. GOAL OF REMEDIAL ACTION. (a) The goal of a remedial action program under this subchapter is to eliminate the release of hazardous waste to the public health and safety or the environment or to prevent a threatened release of hazardous waste to the public health and safety or the environment.

(b) The commission shall determine the feasibility of a remedial action program for the facility by selecting the lowest cost and most effective method.

(c) The commission shall determine if a remedial action program for the facility is technologically feasible.

Sec. 361.192. VOLUNTARY CLEANUP OF FACILITY. (a) If possible, persons identified as persons liable under Subchapter I should be notified by the commission of an opportunity to participate voluntarily in a cleanup of the facility.

(b) If all persons liable under Subchapter I do not volunteer to develop and implement a remedial action program for the facility, private individuals or entities that volunteer to participate in cleanup activities should be allowed to do so and may recover costs under Section 361.344 from liable persons who do not participate in the voluntary cleanup.

(c) If no persons liable under Subchapter I volunteer to develop and implement a remedial action program for the facility, independent third persons who volunteer to participate in the cleanup of the facility should be permitted to contract with the commission to do so. Independent third persons may recover costs under Section 361.344 from liable persons who do not participate in the voluntary cleanup. (V.A.C.S. Art. 4477-7, Sec. 13(g)(1) (part).)

Sec. 361.193. REMEDIAL ACTION PROGRAM BY COMMISSION ON FAILURE OF RESPONSIBLE PERSON. (a) The commission may develop and implement a remedial action program for a facility if:

(1) a person ordered to eliminate an imminent and substantial endangerment to the public health and safety or the environment fails to do so within the time prescribed by the order; and

(2) no third person agrees to develop and implement a remedial action program for the facility under Section 361.192(c).

(b) Persons to whom the order is issued shall pay the commission's reasonable expenses of developing and implementing the remedial action program. The state may recover those reasonable expenses in a court of appropriate jurisdiction.

(c) An action instituted by the commission under this section is subject to Subchapters 1, K, and L. (V.A.C.S. Art. 4477-7, Sec. 13(g)(4).)

Sec. 361.194. REMEDIAL ACTION PROGRAM BY COMMISSION IF NO RESPONSIBLE PERSON. (a) The commission may develop and implement a remedial action program for a facility identified by the registry if:

(1) the commission finds that at the facility there exists a release or threatened release of hazardous waste that presents an imminent and substantial endangerment to the public health and safety or the environment;

(2) after a reasonable attempt to determine who may be liable for the release or threatened release in accordance with Section 361.192, the commission cannot:

(A) determine who may be liable; or

(B) locate a person who may be liable; and

(3) no independent third person agrees to develop and implement a remedial action program for the facility under Section 361.192(c).

(b) Federal funds shall be used for a cleanup under this section to the extent available when needed in accordance with Section 361.189(b).

(c) The commission shall make every effort to obtain appropriate relief from a person subsequently identified or located who is liable for the release or threatened release of hazardous waste at the facility, including recovery of:

(1) the cost of developing and implementing a remedial action program;

(2) payment of the cost of the program; and

(3) reasonable expenses incurred by the state. (V.A.C.S. Art. 4477-7, Sec. 13(g)(5).)

Sec. 361.195. GOAL OF REMEDIAL ACTION PROGRAM. (a) The goal of a remedial action program under this subchapter is to eliminate the imminent and substantial endangerment to the public health and safety or the environment posed by a release or threatened release of hazardous waste at a facility.

(b) The commission shall determine the appropriate extent of remedy at a particular facility by selecting the lowest cost remedial alternative that:

(1) is technologically feasible and reliable; and

(2) effectively mitigates and minimizes damage to and provides adequate protection of the public health and safety or the environment. (V.A.C.S. Art. 4477-7, Sec. 13(g)(6).)

Sec. 361.196. LIEN FOR CLEANUP ACTION. (a) The state has a lien on the real property, and any interest in the real property, that is subject to or affected by a cleanup action for cleanup costs for which a person is liable to the state.

(b) The lien imposed by this section is perfected and attaches to the affected real property when and not before an affidavit is recorded in accordance with Subsection (d) in the county in which the real property is located.

(c) The affidavit must be executed by an authorized representative of the commission and must show:

- (1) the name and address of each person liable for the costs;
- (2) a description of the real property that is affected by the cleanup action; and
- (3) the amount of the costs and the amount due.

(d) The county clerk shall:

- (1) record the affidavit in records kept for that purpose; and
- (2) index the affidavit under the name of each person liable for the costs.

(e) The lien is effective until the liability for the costs is satisfied or becomes unenforceable by operation of law. The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied. (V.A.C.S. Art. 4477-7, Secs. 13(g)(7)(A), (B), (C), (D).)

Sec. 361.197. VALIDITY AND ENFORCEABILITY OF LIEN. The lien imposed by Section 361.196 is not valid or enforceable if real property or an interest in the real property or a mortgage, lien, or other encumbrance on or against the property is acquired before the lien is perfected unless the person acquiring the real property or an interest in the real property or acquiring the mortgage, lien, or other encumbrance:

(1) had or reasonably should have had actual notice or knowledge that the real property is affected by a cleanup action; or

(2) knows that the state has incurred cleanup costs. (V.A.C.S. Art. 4477-7, Sec. 13(g)(7)(F).)

Sec. 361.198. LIEN FORECLOSURE. The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien. (V.A.C.S. Art. 4477-7, Sec. 13(g)(7)(E).)

Sec. 361.199. FILING OF BOND. (a) If a lien is perfected or attempted to be perfected as provided by Section 361.196, the owner of the real property affected by the lien may file a bond to indemnify against the lien.

(b) The bond must be filed with the county clerk of the county in which the real property subject to the lien is located.

(c) An action to establish, enforce, or foreclose a lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond.

(d) The bond must:

- (1) describe the real property on which the lien is claimed;
- (2) refer to the lien claimed in a manner sufficient to identify it;
- (3) be in an amount double the amount of the costs due stated in the lien;
- (4) be payable to the commission;
- (5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and
- (6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property. (V.A.C.S. Art. 4477-7, Secs. 13(g)(7)(G), (H).)

Sec. 361.200. NOTICE OF THE county clerk shall issue notice must be attached to the notice

(b) The notice may be served by a person competent to make

(c) The original notice shall service of copy shall make at what date the copy is served. records kept for that purpose

(d) In acquiring an interest absolutely protected by the re Sec. 13(g)(7)(I).)

Sec. 361.201. SUIT ON B bond after the 30th day follo 361.200 but may not sue on notice is served.

(b) If the commission recove reasonable attorney's fees. (

Sec. 361.202. COSTS OF C FEES. (a) Money for actions imminent and substantial end ment under this subchapter i waste permit and disposal fee

(b) Costs payable to the co sampling and laboratory analy for the commission. (V.A.C.S.

Sec. 361.203. PRIVATE P seek cleanup of a facility by state funds for the cleanup.

(b) Private individuals or hazardous waste programs an

(c) An action taken by the p threatened release in accord admission of liability for the t

(d) If a private individual threatened release comply wit is not liable for additional cle omission of that individual c individual's or entity's gross r

(e) Except as specifically pre law tort liability, if any, of a p for civil damages to a third p

[Sections 3

SUBCHAPTER G. ENF

Sec. 361.221. CRIMINAL knowingl

(1) transports, or causes hazardous waste to any lo commission exercising jurisd

(2) stores, processes, or di any hazardous waste with

Sec. 361.200. NOTICE OF BOND TO NAMED OBLIGEE. (a) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice.

(b) The notice may be served on each obligee by having a copy delivered to the obligee by a person competent to make oath of the delivery.

(c) The original notice shall be returned to the county clerk, and the person making service of copy shall make an oath on the back of each copy showing on whom and on what date the copy is served. The county clerk shall record the bond notice and return in records kept for that purpose.

(d) In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return. (V.A.C.S. Art. 4477-7, Sec. 13(g)(7)(I).)

Sec. 361.201. SUIT ON BOND BY COMMISSION. (a) The commission may sue on the bond after the 30th day following the date on which the notice is served under Section 361.200 but may not sue on the bond later than one year after the date on which the notice is served.

(b) If the commission recovers in a suit on the lien or the bond, it is entitled to recover reasonable attorney's fees. (V.A.C.S. Art. 4477-7, Sec. 13(g)(7)(J).)

Sec. 361.202. COSTS OF CLEANUP PAYABLE TO COMMISSION FROM PERMIT FEES. (a) Money for actions taken or to be taken by the commission to eliminate an imminent and substantial endangerment to the public health and safety or the environment under this subchapter is payable directly to the commission from the hazardous waste permit and disposal fees, if approved by the legislature.

(b) Costs payable to the commission under this section include costs of inspecting or sampling and laboratory analysis of waste, soil, air, surface water, and groundwater done for the commission. (V.A.C.S. Art. 4477-7, Sec. 13(g)(8).)

Sec. 361.203. PRIVATE PARTY CLEANUP; IMMUNITY. (a) The commission shall seek cleanup of a facility by private individuals or entities before spending federal or state funds for the cleanup.

(b) Private individuals or entities shall coordinate with ongoing federal and state hazardous waste programs and obtain necessary approvals for any cleanup.

(c) An action taken by the private individual or entity to contain or remove a release or threatened release in accordance with an approved remedial action plan is not an admission of liability for the release or threatened release.

(d) If a private individual's or entity's actions to contain or remove a release or threatened release comply with an approved remedial action plan, the individual or entity is not liable for additional cleanup costs at the facility resulting solely from an act or omission of that individual or entity, unless the cleanup costs are caused by that individual's or entity's gross negligence or willful misconduct.

(e) Except as specifically provided, this section does not expand or diminish the common law tort liability, if any, of a private individual or entity participating in a cleanup action for civil damages to a third person. (V.A.C.S. Art. 4477-7, Sec. 13(g)(9).)

[Sections 361.204-361.220 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT; CRIMINAL AND CIVIL PENALTIES

Sec. 361.221. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly:

(1) transports, or causes to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have a permit as required by the commission exercising jurisdiction under this chapter;

(2) stores, processes, or disposes of, or causes to be stored, processed, or disposed of, any hazardous waste without a permit as required by the commission exercising

jurisdiction under this chapter or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;

(3) omits or causes to be omitted material information or makes or causes to be made any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used to comply with any requirement of this chapter applicable to hazardous waste;

(4) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, hazardous waste, whether the activity took place before or after September 1, 1981, and who knowingly destroys, alters, conceals, or does not file, or causes to be destroyed, altered, concealed, or not filed, any record, application, manifest, report, or other document required to be maintained or filed to comply with the rules adopted by the commission under this chapter; or

(5) transports without a manifest, or causes to be transported without a manifest, any hazardous waste required by rules adopted by the commission under this chapter to be accompanied by a manifest.

(b) Except as provided by Subsection (c), a person who commits an offense under this section shall be subject on conviction to:

(1) a fine of not less than \$100 or more than \$50,000 for each act of violation and each day of violation;

(2) imprisonment not to exceed five years for a violation under Subsection (a)(1) or (2) or imprisonment not to exceed two years for any other violation under Subsection (a); or

(3) both fine and imprisonment.

(c) If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$200 or more than \$100,000 for each day of violation;

(2) imprisonment not to exceed 10 years for a violation under Subsection (a)(1) or (2), or imprisonment not to exceed four years for any other violation under Subsection (a); or

(3) both fine and imprisonment.

(d) Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in Travis County.

(e) Unless otherwise provided by this chapter, a fine recovered under this section shall be equally divided between the state and the local government or governments that first brought the cause.

(f) In this section, "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals. (V.A.C.S. Art. 4477-7, Secs. 8(b), (d), (e) (part), (f) (part).)

Sec. 361.222. KNOWING ENDANGERMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of this chapter and the person knows at the time that the person by the person's conduct places another person in imminent danger of death or serious bodily injury.

(b) An individual who commits an offense under this section shall be subject on conviction to:

(1) a fine of not more than \$250,000;

(2) imprisonment for not more than 15 years; or

(3) both fine and imprisonment.

(c) A person, other than an individual, that commits an offense under this section shall be subject on conviction to a fine of not more than \$1 million.

(d) It is an affirmative defense that the person endangered consented to the act and the act was reasonably foreseeable.

(1) an occupation, business,

(2) medical treatment or other professionally approved methods involved before giving consent.

(e) Venue for prosecution for an alleged violation is in the county in which the violation is alleged to have occurred or in Travis County.

(f) Unless otherwise provided by this chapter, a fine recovered under this section shall be equally divided between the state and the local government or governments that first brought the cause.

(g) In this section, "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals. (part.)

Sec. 361.223. CIVIL PENALTY. (a) A person who violates a permit, license, or other order of the department or of the authority granted by the department or the authority shall be subject to a civil penalty of not more than \$500 for each day of violation and for each day of violation after the first day of violation occurs.

(b) Any person who violates a permit, license, or other order of the department or of the authority granted by the department or the authority shall be subject to a civil penalty of not more than \$500 for each day of violation and for each day of violation after the first day of violation occurs.

(c) A civil penalty recovered under this chapter shall be paid to the government or governments that first brought the cause and shall be recovery to the credit of the government or governments.

(d) The penalties imposed under Sections 361.134-361.136 or 361.137-361.138 do not apply to interest on a loan under Sections 4477-7, Secs. 8(a)(1), (2), (9); (10); (11); (12); (13); (14); (15); (16); (17); (18); (19); (20); (21); (22); (23); (24); (25); (26); (27); (28); (29); (30); (31); (32); (33); (34); (35); (36); (37); (38); (39); (40); (41); (42); (43); (44); (45); (46); (47); (48); (49); (50); (51); (52); (53); (54); (55); (56); (57); (58); (59); (60); (61); (62); (63); (64); (65); (66); (67); (68); (69); (70); (71); (72); (73); (74); (75); (76); (77); (78); (79); (80); (81); (82); (83); (84); (85); (86); (87); (88); (89); (90); (91); (92); (93); (94); (95); (96); (97); (98); (99); (100); (101); (102); (103); (104); (105); (106); (107); (108); (109); (110); (111); (112); (113); (114); (115); (116); (117); (118); (119); (120); (121); (122); (123); (124); (125); (126); (127); (128); (129); (130); (131); (132); (133); (134); (135); (136); (137); (138); (139); (140); (141); (142); 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(d) It is an affirmative defense to a prosecution under this section that the person endangered consented to the conduct charged and that the danger and conduct charged were reasonably foreseeable hazards of:

- (1) an occupation, business, or profession; or
- (2) medical treatment or medical or scientific experimentation conducted by professionally approved methods if the endangered person had been made aware of the risks involved before giving consent.

(e) Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in Travis County.

(f) Unless otherwise provided by this chapter, a fine recovered under this section shall be equally divided between the state and the local government or governments that first brought the cause.

(g) In this section, "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals. (V.A.C.S. Art. 4477-7, Secs. 8(c), (d), (e) (part), (f) (part).)

Sec. 361.223. CIVIL PENALTIES. (a) A person may not cause, suffer, allow, or permit the collection, storage, handling, transportation, processing, or disposal of solid waste or the use or operation of a solid waste facility to store, process, or dispose of solid waste or to extract materials under Section 361.092 in violation of this chapter or a rule, permit, license, or other order of the department or commission, or a county or a political subdivision exercising the authority granted by Section 361.165 in whose jurisdiction the violation occurs.

(b) Any person who violates any provision of this chapter or any rule, permit, license, or order of the department or commission, or a county or a political subdivision exercising the authority granted by Section 361.165 in whose jurisdiction the violation occurs is subject to a civil penalty of not less than \$100 or more than \$25,000 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided by this section.

(c) A civil penalty recovered in a suit first brought by a local government or governments under this chapter shall be equally divided between the state and the local government or governments that first brought the suit, and the state shall deposit its recovery to the credit of the general revenue fund.

(d) The penalties imposed under this section do not apply to failure to pay a fee under Sections 361.134-361.136 or failure to file a report under Section 361.035. Subsection (c) does not apply to interest and penalties imposed under Section 361.137. (V.A.C.S. Art. 4477-7, Secs. 8(a)(1), (2), (9); 8, as amended by Ch. 279, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.224. SUIT BY STATE. (a) If it appears that a person has violated, is violating, or is threatening to violate any provision of this chapter or of any rule, permit, or other order of the department or commission, the department or the commission may request a civil suit to be brought in a district court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation;
- (2) the assessment and recovery of a civil penalty as provided by this subchapter, as the court may consider proper; or
- (3) both the injunctive relief and civil penalty.

(b) At the request of the commissioner or the executive director, the attorney general shall bring and conduct the suit in the name of the state. (V.A.C.S. Art. 4477-7, Sec. 8(a)(3) (part).)

Sec. 361.225. SUIT BY COUNTY OR POLITICAL SUBDIVISION. If it appears that a violation or threat of violation of any provision of this chapter or any rule, permit, license, or other order of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165 has occurred or is occurring in the jurisdiction of that county or political subdivision, the county or political subdivision, in

the same manner as the commission and the department, may institute a civil suit in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by Section 361.224, against the person who committed, is committing, or is threatening to commit the violation. (V.A.C.S. Art. 4477-7, Sec. 8(a)(4).)

Sec. 361.226. **SUIT BY MUNICIPALITY.** If it appears that a violation or threat of violation of any provision of this chapter or any rule, permit, license, or other order of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165 has occurred or is occurring in a municipality or its extrajurisdiction, or is causing or will cause injury to or an adverse effect on the health, welfare, or physical property of the municipality or its inhabitants, the municipality, in the same manner as the department and the commission, may institute a civil suit in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by Section 361.224, against the person who committed, is committing, or is threatening to commit the violation. (V.A.C.S. Art. 4477-7, Sec. 8(a)(5).)

Sec. 361.227. **VENUE.** A suit for injunctive relief or for recovery of a civil penalty, or for both, may be brought in the county in which the defendant resides or in the county in which the violation or threat of violation occurs. (V.A.C.S. Art. 4477-7, Sec. 8(a)(6) (part).)

Sec. 361.228. **INJUNCTION.** (a) On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or of any rule, permit, or other order of the department or the commission, the district court shall grant appropriate injunctive relief.

(b) In a suit brought to enjoin a violation or threat of violation of this chapter or of any rule, permit, license, or order of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the court may grant any prohibitory or mandatory injunction warranted by the facts, including a temporary restraining order after notice and hearing, a temporary injunction, and a permanent injunction. The court shall grant injunctive relief without bond or other undertaking by the governmental entity. (V.A.C.S. Art. 4477-7, Secs. 8(a)(3) (part), (6) (part).)

Sec. 361.229. **PARTIES IN SUIT BY LOCAL GOVERNMENT.** In a suit brought by a local government under Section 361.225 or 361.226, the department and the commission are necessary and indispensable parties. (V.A.C.S. Art. 4477-7, Sec. 8(a)(7).)

[Sections 361.230-361.250 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT; ADMINISTRATIVE PENALTIES

Sec. 361.251. **ADMINISTRATIVE PENALTY BY DEPARTMENT.** (a) The department may assess a civil penalty against a person as provided by this section if the person violates:

- (1) a provision of this chapter that is under the department's jurisdiction; or
 - (2) a rule adopted by the board of health or order, license, or permit issued by the department under this chapter.
- (b) The amount of the penalty may not exceed \$10,000 a day for a person who violates this chapter or a rule, order, license, or permit issued under this chapter. Each day a violation continues may be considered a separate violation.
- (c) In determining the amount of the penalty, the department shall consider:
- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health or safety of the public;
 - (2) the history of previous violations;
 - (3) the amount necessary to deter future violations;
 - (4) efforts to correct the violation; and
 - (5) any other matters that justice may require.

(d) If, after examination of the violation, the department issues a preliminary report:

- (1) stating the facts of the violation;
- (2) recommending that the person charged with the violation as determined by the department shall give written notice of the violation. The notice must include:

- (1) a brief summary of the violation;
 - (2) a statement of the facts of the violation, the amount of the civil penalty, and the amount of the civil penalty recommended;
 - (3) a statement of the facts of the violation, the amount of the civil penalty, and the amount of the civil penalty recommended;
- (f) Not later than the 2nd day after the person charged may give to the department, including the recommended civil penalty.

(g) If the person charged with the violation or does not appear before the commissioner's designee by the findings and recommendations of the commissioner's designee as the person charged of the violation.

(h) If the person charged with the violation or does not appear before the commissioner shall order and shall order the hearing shall be held.

(i) The hearing shall be held by the commissioner or the commissioner's designee. The commissioner shall examine the commissioner a written decision of the amount of the civil penalty.

(j) Based on the findings of the commissioner by order may find that no violation occurred.

(k) All proceedings under this section and Texas Register Act shall be published in the Texas Register.

(l) The commissioner shall order the person charged, and if the commissioner assesses a civil penalty, the commissioner shall order the person charged to pay the civil penalty.

- (1) the commissioner's decision;
- (2) the amount of the civil penalty;
- (3) the person's right to appeal.

(n) Not later than the 30th day after the final, the person charged with the violation shall seek judicial review.

(o) If the person seeks judicial review of the civil penalty, or both, the person shall:

- (1) send the amount of the civil penalty; or
- (2) post with the commissioner for the amount of the civil penalty.

(p) A person who fails to pay the civil penalty and the commissioner may:

- (1) suspend the person's license or permit;
- (2) suspend the person's license or permit;
- (3) suspend the person's license or permit;

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a preliminary report:

- (1) stating the facts that support the conclusion;
- (2) recommending that a civil penalty under this section be imposed; and
- (3) recommending the amount of the penalty, which shall be based on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the department shall give written notice of the report to the person charged with the violation. The notice must include:

- (1) a brief summary of the charges;
- (2) a statement of the amount of the penalty recommended; and
- (3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may give to the commissioner written consent to the department's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the commissioner or does not timely respond to the notice, the commissioner or the commissioner's designee by order shall assess the penalty or order a hearing to be held on the findings and recommendations in the department's report. If the commissioner or the commissioner's designee assesses the penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

(h) If the person charged requests or the commissioner orders a hearing, the commissioner shall order and shall give notice of the hearing.

(i) The hearing shall be held by a hearing examiner designated by the commissioner.

(j) The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and a recommendation of the amount of the proposed penalty if a penalty is warranted.

(k) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner by order may find that a violation has occurred and assess a civil penalty or may find that no violation occurred.

(l) All proceedings under Subsections (h)-(k) are subject to the Administrative Procedure and Texas Register Act (Article 6252-16a, Vernon's Texas Civil Statutes).

(m) The commissioner shall give notice of the commissioner's decision to the person charged, and if the commissioner finds that a violation has occurred and assesses a civil penalty, the commissioner shall give written notice to the person charged of:

- (1) the commissioner's findings;
- (2) the amount of the penalty; and
- (3) the person's right to judicial review of the commissioner's order.

(n) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall pay the penalty in full or file a petition for judicial review.

(o) If the person seeks judicial review of the fact of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (n), shall:

- (1) send the amount of the penalty to the commissioner for placement in an escrow account; or
- (2) post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(p) A person who fails to comply with Subsection (o) waives the right to judicial review, and the commissioner may refer the matter to the attorney general for enforcement.

(q) Judicial review of the order or decision of the commissioner assessing the penalty shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(r) If the penalty is reduced or not assessed, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the bond if a supersedeas bond has been posted.

(s) The accrued interest on amounts remitted by the commissioner shall be paid: (1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid to the commissioner under Subsection (o) and ending on the date the penalty is remitted.

(t) A penalty collected under this section shall be deposited to the credit of the general revenue fund. (V.A.C.S. Art. 4477-7, Secs. 8a(a)-(i), (j) (part), (k)-(n).)

Sec. 361.252. ADMINISTRATIVE PENALTY BY COMMISSION. (a) The commission may assess a civil penalty against a person as provided by this section if the person violates:

(1) a provision of this chapter concerning solid waste that is under the commission's jurisdiction;

(2) a rule or order adopted by the commission concerning solid waste that is under the commission's jurisdiction; or

(3) a solid waste permit or registration issued by the commission under this chapter.

(b) The amount of the penalty may not exceed \$10,000 a day for a person who violates this chapter or a rule, order, or permit issued under this chapter. Each day a violation continues may be considered a separate violation.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited act with special emphasis on the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation;

(D) economic benefit gained by the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report:

(1) stating the facts that support the conclusion;

(2) recommending that a civil penalty under this section be imposed; and

(3) recommending the amount of the penalty, which shall be based on the factors prescribed by Subsection (c), including an analysis of each factor for the commission.

(e) Not later than the executive director shall give written notice of violation. The notice shall include:

(1) a brief summary of the violation;

(2) a statement of the amount of the penalty assessed;

(3) a statement of the date by which the penalty must be paid.

(f) Not later than the date the notice is given, the person charged may give to the commission a written statement, including the recommendation of the executive director, of the reasons why the person believes the penalty should not be assessed.

(g) If the person charged does not give a statement to the commission, the executive director shall assess the penalty. The commission shall give written notice of the assessment to the person charged.

(h) If the person charged does not give a statement to the commission, the executive director shall order and shall give written notice of the assessment to the person charged. In making the assessment, the executive director shall prescribe by Subsection (a) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The commission shall give written notice to the person charged if the commission finds that a violation has occurred. The notice shall include:

(1) the commission's findings of fact and conclusions of law;

(2) the amount of the penalty assessed;

(3) the person's right to appeal the assessment.

(j) If the commission finds that a violation has occurred, the commission shall give written notice of the assessment to the person charged. The notice shall be given not later than the 10th day after the date the commission finds that a violation has occurred.

(k) Not later than the date the notice is given, the person charged may give to the commission a written statement, including the recommendation of the executive director, of the reasons why the person believes the penalty should not be assessed.

(l) If the person charged does not give a statement to the commission, the executive director shall assess the penalty. The commission shall give written notice of the assessment to the person charged.

(1) send the amount of the penalty assessed to the executive director; or

(2) post with the commission for the amount of the penalty assessed. The order or decision is final.

(m) A person who fails to pay the penalty assessed by the commission may be subject to civil enforcement, and the commission may seek a writ of mandamus for enforcement.

(n) Judicial review of the order or decision of the commissioner assessing the penalty shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(o) The commission may assess a civil penalty imposed under this section against a person who violates this section.

(p) Payment of a penalty assessed by the commission does not constitute an admission of criminal liability for the violation.

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(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice must include:

- (1) a brief summary of the charges;
- (2) a statement of the amount of the penalty recommended; and
- (3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Not later than the 20th day after the date on which notice is received, the person charged may give to the commission written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice, the commission by order shall assess the penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty, the commission shall give written notice to the person charged of its decision.

(h) If the person charged requests or the commission orders a hearing, the commission shall order and shall give notice of the hearing. The commission by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. In making a penalty decision, the commission shall analyze each factor prescribed by Subsection (c). All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and assesses a civil penalty, the commission shall give written notice to the person charged of:

- (1) the commission's findings;
- (2) the amount of the penalty; and
- (3) the person's right to judicial review of the commission's order.

(j) If the commission is required to give notice of a civil penalty under Subsection (g) or (h), the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(k) Not later than the 30th day after the date on which the commission's order is final, the person charged with the penalty shall pay the penalty in full or file a petition for judicial review.

(l) If the person seeks judicial review of the fact of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (k), shall:

- (1) send the amount of the penalty to the commission for placement in an escrow account; or

- (2) post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(m) A person who fails to comply with Subsection (l) waives the right to judicial review, and the commission or the executive director may refer the matter to the attorney general for enforcement.

(n) Judicial review of the order or decision of the commission assessing the penalty shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(o) The commission may compromise, modify, or remit, with or without conditions, a civil penalty imposed under this section.

(p) Payment of a penalty under this section is full and complete satisfaction of the violation for which the administrative penalty is assessed and precludes any other civil or criminal penalty for the same violation.

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(2) require the persons to be effective and environmental release or threatened

Sec. 361.274. NO PRE
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Sec. 361.275. DEFENSE
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- (1) an act of God;
- (2) an act of war;
- (3) an act or omission
- (4) any combination of

(b) In a defense under § 87(2)(b) of the Evidence Act, the defendant must prove the absence of the evidence that (1) exercised due care in the handling of the solid waste, in light of the nature of the waste and the circumstances of the case.

(c) The defense under S.

- (1) is an employee or a
- (2) has a direct or indirect
- omission of the third per

- (d) In Subsection (c)(2),
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(c)(2) is not liable under this

(1) the sole contractual carrier under a published

(2) the defendant acquiesced in the remedial action is located, or, in, or at the facility evidence that:

- (A) the defendant has

- had no reason to know of or threatened release of

- (C) the defendant is a
other involuntary transi
domain; or

(f) To demonstrate the course made, at the time of acquisition of the property consistent with minimize liability. In deciding consider:

- (1) any specialized knowledge;
- (2) the relationship of the facts were uncontaminated;
- (3) commonly known or

(2) require the person to take actions necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release. (V.A.C.S. Art. 4477-7, Sec. 8(g)(1) (part).)

Sec. 361.274. NO PRIOR NOTICE CONCERNING ADMINISTRATIVE ORDER. An administrative order under Section 361.272 does not require prior notice or an adjudicative hearing before the department or commission. (V.A.C.S. Art. 4477-7, Sec. 8(g)(1) (part).)

Sec. 361.275. DEFENSES. (a) A person responsible for solid waste under Section 361.271 is liable under Section 361.272 or 361.273 unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by:

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third person; or
- (4) any combination of Subdivisions (1), (2), and (3).

(b) In a defense under Subsection (a)(3), the defendant must establish by a preponderance of the evidence that the defendant:

- (1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and
- (2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.

(c) The defense under Subsection (a)(3) does not apply if the third person:

- (1) is an employee or agent of the defendant; or
- (2) has a direct or indirect contractual relationship with the defendant and the act or omission of the third person occurred in connection with the contractual relationship.

(d) In Subsection (c)(2), "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.

(e) A defendant who enters into a contractual relationship as provided by Subsection (c)(2) is not liable under this subchapter if:

(1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or

(2) the defendant acquired the real property on which the facility requiring the remedial action is located, after the disposal or placement of the hazardous substance on, in, or at the facility and the defendant establishes by a preponderance of the evidence that:

(A) the defendant has satisfied Subsection (b);

(B) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(C) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or

(D) the defendant acquired the facility by inheritance or bequest.

(5) To demonstrate the condition under Subsection (e)(2)(B), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

- (1) any specialized knowledge or experience of the defendant;
- (2) the relationship of the purchase price to the value of the property if the property were uncontaminated;
- (3) commonly known or reasonably ascertainable information about the property;

- (4) the obvious presence or likely presence of contamination of the property; and
- (5) the defendant's ability to detect the contamination by appropriate inspection.

(g) This section does not decrease the liability of a previous owner or operator of a facility who is liable under this chapter. If the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(h) Subsections (e)-(g) do not affect the liability under this chapter of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility. (V.A.C.S. Art. 4477-7, Secs. 8(g)(3), (6).)

Sec. 361.276. APPORTIONMENT OF LIABILITY. (a) If the release or threatened release caused by a person's acts or omissions is proved by a preponderance of the evidence to be divisible, that person is liable only for the elimination of that release or threatened release attributable to the person. If the release or threatened release is not proved to be divisible, persons liable under Section 361.272 or 361.273 are jointly and severally liable for eliminating the release or threatened release.

(b) In this section, "divisible" means that the waste released or threatened to be released has been and is capable of being managed separately under the remedial action plan. (V.A.C.S. Art. 4477-7, Sec. 8(g)(4).)

Sec. 361.277. JUDGMENT BY STATE AGAINST NONSETTLING PARTY; ACTION FOR CONTRIBUTION BY NONSETTLING PARTY. (a) If fewer than all of the persons identified as liable under this subchapter agree with the state to take remedial action to abate an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment under an administrative order issued under Section 361.272 or an action filed by the state under this subchapter, the state may seek a judgment against a nonsettling person for the total amount of the cost of the remedial action minus that amount the settling persons agree to pay or spend.

(b) In an action for contribution brought by a nonsettling person against a settling person, the nonsettling person has the burden to prove that the amount of cleanup costs that a settling person agreed to pay under an agreement with the state is unreasonable considering the factors under Section 361.343 and the need to undertake timely cleanup action concerning the release or threatened release. (V.A.C.S. Art. 4477-7, Sec. 8(g)(5).)

Sec. 361.278. LIABILITY OF ENGINEER OR CONTRACTOR. (a) An engineer or contractor performing a program of remedial action or cleanup of hazardous waste or solid waste under a contract with a state agency or political subdivision of the state is liable under this subchapter for any negligent act or omission or for wilful misconduct that results in an actual or threatened release of hazardous waste or solid waste after the abandonment or conclusion of the program only to the extent that the endangerment to public health and safety or the environment is aggravated as a result of the act, omission, or misconduct.

(b) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with:

- (1) identifying a hazardous or solid waste site;
- (2) developing a plan to clean up the site; or
- (3) supervising or implementing the plan to clean up the site. (V.A.C.S. Art. 4477-7, Sec. 8(i) as added by Ch. 302, Acts 70th Legis., Reg. Sess., 1987.)

Sec. 361.279. CONTRACTS WITH STATE. A state agency contracting for services or products shall consider whether the person proposing to contract with the state has been adjudicated during the preceding three-year period to have committed substantive, non-fatal violations resulting in an actual release of hazardous waste that presented an

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Sec. 361.280. REMEDIES
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SUBCHAPTER

Sec. 361.301. EMERGEN
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imminent and substantial danger to the public health and safety or the environment. (V.A.C.S. Art. 4477-7, Sec. 8(h).)

Sec. 361.280. REMEDIES CUMULATIVE. (a) The remedies under this subchapter are cumulative of all other remedies.

(b) This subchapter does not exempt a person from complying with or being subject to other law. (V.A.C.S. Art. 4477-7, Sec. 8(g)(1) (part).)

[Sections 361.281-361.300 reserved for expansion]

SUBCHAPTER J. ENFORCEMENT; EMERGENCY ORDER;
CORRECTIVE ACTION

Sec. 361.301. EMERGENCY ORDER. (a) The department and the commission may each issue an emergency mandatory or prohibitory order concerning an activity of solid waste management under its jurisdiction, even if the activity is not covered by a permit, if the agency determines that an emergency requiring immediate action to protect the public health and safety or the environment exists.

(b) The order may be issued without notice and hearing or with notice and hearing the agency considers practicable under the circumstances.

(c) If an emergency order is issued under this section without a hearing, the issuing agency shall set a time and place for a hearing to be held in accordance with the rules of the board of health or commission to affirm, modify, or set aside the emergency order.

(d) The requirements of Section 361.088 concerning public notice do not apply to the hearing, but general notice of the hearing shall be given in accordance with the rules of the board of health or commission. (V.A.C.S. Art. 4477-7, Sec. 4(e)(10).)

Sec. 361.302. ISSUANCE OF ORDER BY COMMISSION. (a) The commission may issue an order to a person requiring compliance with this chapter and prescribing the corrective action that the person must take to achieve compliance if the person violates:

(1) the provisions of this chapter concerning solid waste under the commission's jurisdiction;

(2) a rule or order adopted by the commission concerning solid waste under the commission's jurisdiction; or

(3) a solid waste permit or registration issued by the commission under this chapter.

(b) The order may be issued instead of or in addition to an order under Section 361.252 assessing an administrative civil penalty.

(c) Judicial review of an order issued under this section is in the district court of the county in which the alleged violation occurred. (V.A.C.S. Art. 4477-7, Sec. 8c.)

Sec. 361.303. CORRECTIVE ACTION. (a) The commission shall require corrective action for a release of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of when the waste is placed in the unit.

(b) The commission shall establish schedules for compliance for the corrective action, if the corrective action cannot be completed before permit issuance, and shall require assurances of financial responsibility for completing the corrective action.

(c) If, before the issuance of a permit, the commission determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), the commission may:

(1) issue an order requiring corrective action or other response measure considered necessary to protect human health or the environment; or

(2) institute a civil action under Section 361.224.

(d) An order issued under this section:

- (1) may include a suspension or revocation of authorization to operate;
- (2) must state with reasonable specificity the nature of the required corrective action or other response measure; and
- (3) must specify a time for compliance.

(e) If any person named in the order does not comply with the order, the agency issuing the order may assess a civil penalty in accordance with this chapter. (V.A.C.S. Art. 4477-7, Sec. 4(m).)

[Sections 361.304-361.320 reserved for expansion]

SUBCHAPTER K. APPEALS; JOINDER OF PARTIES

Sec. 361.321. APPEALS. (a) A person affected by a ruling, order, decision, or other act of the department or the commission may appeal the action by filing a petition in the district court of Travis County.

(b) A person affected by a ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted by Section 361.165, may appeal by filing a petition in a district court with jurisdiction in the county or political subdivision.

(c) Except as provided by Section 361.322(b), the petition must be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed. Service of citation must be accomplished not later than the 30th day after the date on which the petition is filed.

(d) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(e) Except as provided by Section 361.322(e), in an appeal from an action of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the issue is whether the action is invalid, arbitrary, or unreasonable. (V.A.C.S. Art. 4477-7, Sec. 9(a) (part).)

Sec. 361.322. APPEAL OF ADMINISTRATIVE ORDER ISSUED UNDER SECTION 361.272; JOINDER OF PARTIES. (a) A person filing a petition appealing an administrative order issued under Section 361.272 must join as a party the state agency issuing the administrative order and may join as a party:

- (1) any other person named in the administrative order; and
- (2) any other person who is or may be liable for the elimination of the actual or threatened release of solid waste governed by the administrative order.

(b) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(c) The filing of the petition before the 46th day after the date of receipt, hand delivery, or publication service of the order stays the order as to the appealing party pending action by the district court. The filing of the petition does not affect other enforcement powers of the department or commission.

(d) The administrative order is final as to a nonappealing party on the 46th day after the date of receipt, hand delivery, or publication service of the order by, to, or on the nonappealing party.

(e) The district court shall uphold the order if the department or the commission, by a preponderance of the evidence, proves that:

(1) there is an actual or threatened substantial endangerment to

(2) the person made subject to the release or threatened release

(f) A person made a party to the action may be liable for the elimination of a party to file an action for contribution under this chapter or other law.

(c) In an appeal under this section the court shall issue an injunction if a substantial liability has been established by the person who failed to comply with the order.

(b) As between parties determined by equity requires, apportion cleanup costs or other appropriate relief. (V.A.C.S. Art. 4477-7, Sec. 4(m).)

Sec. 361.323. JOINDER OF PARTIES. (a) In an action brought by the attorney general to eliminate a release or threatened release, a party a person reasonably expected to be a party in accordance with Section 361.322(b).

(b) Failure of the attorney general to prosecute a defense to an action against the attorney general.

(c) In an action brought by the attorney general, the court shall grant relief on the grounds set forth in Section 361.322(f) and (g) apply to the action.

[Sections 361.324-361.340 reserved for expansion]

SUBCHAPTER L. COST RECOVERY

Sec. 361.341. COST RECOVERY. (a) In an action for recovery of reasonable attorney's fees, reasonable costs of investigation, or other costs, the court shall award costs to the prevailing party.

(1) an appeal of an administrative order issued under Section 361.191;

(2) an action to enforce such order;

(3) a civil suit seeking injunctive relief;

(4) a cost recovery suit under this chapter.

(b) The court shall apportion costs between the parties and just.

(c) Costs recovered by the state shall be:

(1) remitted to the commission;

(2) placed in a separate account to be used by the commission for the cleanup program. (V.A.C.S. Art. 4477-7, Sec. 4(m).)

Sec. 361.342. COST RECOVERY. (a) In an action for recovery of reasonable attorney's fees, reasonable costs of investigation, or other costs, the court shall award costs to the prevailing party.

(1) attorney's fees;

(2) costs to prepare and present evidence;

(3) costs of studies, analysis, or other work that was necessary to prepare evidence.

- (1) there is an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment; and
 - (2) the person made subject to the administrative order is liable for the elimination of the release or threatened release, in whole or in part.
- (f) A person made a party to the appeal may join as a party any other person who is or may be liable for the elimination of the release or threatened release, but the failure by a party to file an action for contribution or indemnity does not waive any right under this chapter or other law.
- (g) In an appeal under this section, the district court on establishing the validity of the order shall issue an injunction requiring any person named or joined against whom liability has been established by the department or the commission or other party to comply with the order.
- (h) As between parties determined to be liable under Subchapter I, the court may, as equity requires, apportion cleanup costs in accordance with Section 361.343 and grant any other appropriate relief. (V.A.C.S. Art. 4477-7, Secs. 9(a) (part), (b)-(g).)
- Sec. 361.323. JOINDER OF PARTIES IN ACTION FILED BY STATE. (a) In an action brought by the attorney general under Section 361.273 seeking an injunction to eliminate a release or threatened release, the attorney general shall, and a party may, join as a party a person reasonably believed to be liable for the release or threatened release in accordance with Section 361.272.
- (b) Failure of the attorney general or a party to name or join a person as a party is not defense to an action against that person for contribution or indemnity.
- (c) In an action brought by the attorney general under Section 361.273, the district court shall grant relief on the grounds provided by Section 361.322(d), and Sections 361.322(f) and (g) apply to the action. (V.A.C.S. Art. 4477-7, Sec. 10.)

[Sections 361.324-361.340 reserved for expansion]

SUBCHAPTER L. COST RECOVERY

- Sec. 361.341. COST RECOVERY BY STATE. (a) The state is entitled to recover reasonable attorney's fees, reasonable costs to prepare and provide witnesses, and reasonable costs of investigating and assessing the facility or site if it prevails in:
- (1) an appeal of an administrative order issued under Section 361.272 or Section 361.191;
 - (2) an action to enforce such an administrative order;
 - (3) a civil suit seeking injunctive relief under Section 361.272; or
 - (4) a cost recovery suit under Section 361.190.
- (b) The court shall apportion the costs among liable parties as it determines is equitable and just.
- (c) Costs recovered by the state under this section shall be:
- (1) remitted to the commission; and
 - (2) placed in a separate account in the hazardous waste generation and facility fees fund for use by the commission to administer the hazardous waste management program. (V.A.C.S. Art. 4477-7, Secs. 9(h)(1), (2).)
- Sec. 361.342. COST RECOVERY BY APPEALING OR CONTESTING PARTY. If the court finds that an administrative order referred to by Section 361.341 is frivolous, unreasonable, or without foundation with respect to a party named by the order, the party appealing or contesting the order is entitled to recover from the state its reasonable:
- (1) attorney's fees;
 - (2) costs to prepare and provide witnesses; and
 - (3) costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary to prepare the party's case. (V.A.C.S. Art. 4477-7, Sec. 9(h)(3).)

Sec. 361.343. APPORTIONMENT OF COSTS. (a) Apportionment of costs for the elimination of the release or threatened release of solid waste among the persons responsible for solid waste under Section 361.271 shall be made according to:

(1) the relationship between the parties' actions in storing, processing, and disposing of solid waste and the remedy required to eliminate the release or threatened release;

(2) the volume of solid waste each party is responsible for at the solid waste facility or site to the extent that the costs of the remedy are based on the volume of solid waste present;

(3) consideration of toxicity or other waste characteristics if those characteristics affect the cost to eliminate the release or threatened release; and

(4) a party's cooperation with state agencies, its cooperation or noncooperation with the pending efforts to eliminate the release or threatened release, or a party's actions concerning storing, processing, or disposing of solid waste, as well as the degree of care that the party exercised.

(b) The apportionment of costs only adjusts the rights of parties identified by Section 361.271 and does not affect a person's liability to the state. (V.A.C.S. Art. 4477-7, Sec. 11(a).)

Sec. 361.344. COST RECOVERY BY LIABLE PARTY OR THIRD PARTY. (a) A person subject to a court injunction or an administrative order issued under this chapter, or a third person identified by Section 361.192(c) who acts to eliminate a release or threatened release, in addition to having the right to file an action for contribution or indemnity, or both, in an appeal proceeding or in an action brought by the attorney general, may bring suit in a district court to recover costs incurred to eliminate the release or threatened release and other costs as the court, in its discretion, considers reasonable.

(b) Venue for the suit is:

(1) in the county in which the release or threatened release is or was located; or

(2) in any other county in which venue is proper under Chapter 15, Civil Practice and Remedies Code.

(c) To recover costs under this section in a proceeding that is not an appeal proceeding or an action brought by the attorney general under this subchapter, the person seeking cost recovery must have made reasonable attempts to notify the person against whom cost recovery is sought:

(1) of the existence of the release or threatened release; and

(2) that the person seeking cost recovery intended to take steps to eliminate the release or threatened release.

(d) The court shall determine the amount of cost recovery according to the criteria prescribed by Section 361.343.

(e) A fact determination or ruling by a district court in an appeal of an administrative order under Section 361.322 is not res judicata or collateral estoppel as to an issue brought in a proceeding under this section concerning a party not joined in the appeal. (V.A.C.S. Art. 4477-7, Secs. 11(b), (c).)

Sec. 361.345. CREATION OF RIGHTS. Subchapter I and Section 361.344 and the enforcement by the department or the commission of that subchapter and section do not:

(1) create rights or causes of action on behalf of a person other than those expressly stated by this chapter; or

(2) change common law or a rule of decision except as limited by this chapter to actions by the department or the commission to eliminate an actual release or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment. (V.A.C.S. Art. 4477-7, Sec. 11b.)

CHAPTER 362. SOLID WASTE

SUBCHAPTER 1

- Sec. 362.001. SHORT TITLE
- Sec. 362.002. POLICY AND PURPOSE
- Sec. 362.003. DEFINITIONS
- Sec. 362.004. EFFECT OF OTHER LAWS
- Sec. 362.005. EXCEPTION FOR CERTAIN ACTIVITIES

[Sections 362.006 through 362.010 are omitted.]

SUBCHAPTER 2

- Sec. 362.011. AUTHORITY TO ENFORCE
- Sec. 362.012. LOCATION OF FACILITIES
- Sec. 362.013. CONTRACT REQUIREMENTS
- Sec. 362.014. PUBLIC AGENCY RESPONSIBILITIES
- Sec. 362.015. PAYMENT OF COSTS
- Sec. 362.016. PAYMENT OF COSTS
- Sec. 362.017. INDUSTRIAL FACILITIES
- Sec. 362.018. COST OF CERTAIN ACTIVITIES
- Sec. 362.019. TAXATION

[Sections 362.020 through 362.030 are omitted.]

- Sec. 362.031. AUTHORITY TO ENFORCE
- Sec. 362.032. FORM AND CONTENT OF PERMITS
- Sec. 362.033. TERMS AND CONDITIONS OF PERMITS
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- Sec. 362.035. PLEDGE OF BOND
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- Sec. 362.037. TRUST AS SECURITY
- Sec. 362.038. OTHER SECURITY MEASURES
- Sec. 362.039. ACTION BY BONDSMEN
- Sec. 362.040. INVESTMENT IN BOND
- Sec. 362.041. REFUNDING OF BOND
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CHAPTER 362. SOLID WASTE

SUBCHAPTER 3

- Sec. 362.001. SHORT TITLE
- Sec. 362.002. POLICY AND PURPOSE
- Sec. 362.003. DEFINITIONS
- Sec. 362.004. EFFECT OF OTHER LAWS
- Sec. 362.005. EXCEPTION FOR CERTAIN ACTIVITIES
- Sec. 362.006. SHORT TITLE
- Sec. 362.007. POLICY AND PURPOSE
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- Sec. 362.011. AUTHORITY TO ENFORCE
- Sec. 362.012. LOCATION OF FACILITIES
- Sec. 362.013. CONTRACT REQUIREMENTS
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- Sec. 362.015. PAYMENT OF COSTS
- Sec. 362.016. PAYMENT OF COSTS
- Sec. 362.017. INDUSTRIAL FACILITIES
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- Sec. 362.019. TAXATION

(1) "Bond" includes a note or other security instrument.