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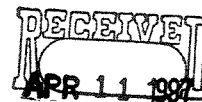
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John M. Baker, *Commissioner*
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TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

April 10, 1997



Ms. Alima Patterson
Grants & Authorization Section
United States Environmental Protection Agency, Region 6
1335 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
(214) 665-6762

RE: Final Authorization Application for RCRA Cluster IV

Dear Alima:

Pursuant to your comments regarding the final authorization package for RCRA Cluster IV, enclosed are the TNRCC revisions. The enclosed pages of the AG statement should be substituted in the statement submitted to you previously, while the enclosed checklists can be entirely substituted.

At your request, I have also included specific provisions of our rules.

Sincerely,

A handwritten signature in cursive script that reads "A. Bourgeois".

Alexandre Bourgeois
Staff Attorney
Texas Natural Resource
Conservation Commission

RCRA ~~II~~
signed &
dated
3/11/97

ATTORNEY GENERAL'S STATEMENT FOR FINAL AUTHORIZATION FOR RCRA CLUSTER IV

This Attorney General Statement consists of two primary parts. The first part certifies that, in light of recent Texas statutory changes, the laws of the State of Texas continue to provide adequate authority to maintain program authorization. The second part certifies that the State of Texas possesses the necessary laws to implement the federal regulatory changes submitted as RCRA Cluster IV.

GENERAL CERTIFICATION

This section addresses concerns raised by EPA in its November 26, 1996, letter to Mr. Minor Hibbs regarding Senate Bills 14, 1546 and 1660 adopted during the 1995 Texas legislative session. Because S.B. 1660 referenced in the letter does not relate to environment health and safety audits, I interpret this reference to relate to H.B. 2473. I certify that in my opinion the laws of the State of Texas continue to provide adequate authority to the Texas Natural Resource Conservation Commission ("TNRCC") to maintain authorization of the RCRA program.

A. Public Participation in the Permitting Process

The RCRA program allows public participation in the permitting process. Commission records are open to the public for review subject to statutory privileges and claims of confidentiality. Texas Gov't Code, Ch. 552. After a permit application is complete and a draft permit is prepared by the Executive Director, notice of the application is published and mailed to persons and governmental bodies specified in the rule and anyone else who requests to be included on the mailing list. Mailed notice is more widely distributed than is required by 40 C.F.R. § 124.10(c). For example, the notice is sent to neighboring landowners. 30 TEX. ADMIN. CODE §§ 39.13, 39.103, 281.17, 281.21. The notices include the information required by 40 C.F.R. § 124.10(d). 30 TEX. ADMIN. CODE § 39.11. A public comment period of at least 45 days is provided. 30 TEX. ADMIN. CODE § 39.103. Commission staff responds to all significant comments received during the comment period and makes its responses available to the public, provides copies of the permit application, and gives other appropriate responses. 30 TEX. ADMIN. CODE § 305.106, Commission Resolution, October 8, 1996 ("Commission Resolution"), paragraphs 2(b) and (c) and 5(c).

The Commission holds public meetings whenever there is a significant degree of public interest in a draft permit. Commission Resolution, paragraph 2(c). These public meetings are equivalent to EPA's public hearing process described in 40 C.F.R. § 124.12 and are usually held in the location of the proposed activity. The meetings provide the public an opportunity to give and receive information outside the adversarial setting of a contested case proceeding. Beyond the public meeting and the requirements set out in 40 C.F.R. §§ 271.14 and 124.10, the Commission gives persons affected by a proposed permit the opportunity to invoke the contested case hearing process. Tex. Water Code § 5.115; Tex. Health & Safety Code § 361.082; the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; and 30 TEX. ADMIN. CODE Chapter 55, provide that an affected person may request an adjudicative public hearing. A notice of hearing, containing more information than the minimum amount prescribed in 40 C.F.R. § 124.10(d) is published and mailed at least 30 days prior to the hearing date. 30 TEX. ADMIN. CODE § 39.103.

When the evidentiary hearing is convened, persons other than those who originally requested the hearing may either make public comment or seek party status in the evidentiary hearing. *Id.* §§ 80.109, 80.111. After the hearing and consideration of any motion for rehearing, judicial review is available to provide further access to the permitting process. Tex. Water Code § 5.351; Tex. Health & Safety Code § 361.321; 30 TEX. ADMIN. CODE § 273.6; and Tex. Gov't Code, Ch. 2001.

B. Public Participation in the Enforcement Process

The Commission investigates all citizen complaints and provides a written report and response to the complaining party. Tex. Water Code § 5.177. Public effort in reporting violations is encouraged. The Office of the Attorney General publishes notice of and provides at least 30 days for public comment on any proposed settlement of a civil hazardous waste enforcement lawsuit. As required by 40 C.F.R. §§ 271.16(d)(2)(ii), the Office of the Attorney General will not oppose intervention by a citizen in judicial enforcement actions under the RCRA program when such intervention is authorized by statute, rule, or regulation.

Comment: Texas law complies with the requirement of 40 C.F.R. § 271.16(d)(2)(ii) that permissive intervention be authorized by statute, rule, or regulation. Meaningful opportunities exist for citizen participation in civil penalty enforcement actions by virtue of Rule 60 of the Texas Rules of Civil Procedure and common law doctrines of associational and individual standing. In the case of *Guaranty Federal Savings Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990), the Texas Supreme Court outlined the requirements and operation of Rule 60:

Rule 60 of the Texas Rules of Civil Procedure provides that “[a]ny party may intervene, subject to being stricken out by the court for sufficient cause on the motion of the opposite party....” TEX.R.CIV.P. 60. An intervenor is not required to secure the court’s permission to intervene; the party who opposed the intervention has the burden to challenge it by a motion to strike. *See In re Nation*, 694 S.W.2d 588 (Tex. App.—Texarkana 1985, no writ); *Jones v. Springs Ranch Co.*, 642 S.W.2d 551 (Tex. App.—Amarillo 1982, no writ).

Furthermore, under Rule 60, a person or entity has the right to intervene if the intervenor could have brought the same action, or any part thereof, in his own name, or, if the action had been brought against him, he would be able to defeat recovery, or some part thereof. *Inter-Continental Corp. v. Moody*, 411 S.W.2d 578, 589 (Tex. Civ. App.—Houston [1st Dist.] 1966, writ ref’d n.r.e.); *Texas Supply Center, Inc. v. Daon Corp.*, 641 S.W.2d 335, 337 (Tex. App.—Dallas 1982, writ ref’d n.r.e.). The interest asserted by the intervenor may be legal or equitable. *Moody*, 411 S.W.2d at 589. Although the trial court has broad discretion in determining whether an intervention should be stricken, it is an abuse of discretion to strike a plea in intervention if (1) the intervenor meets the above test, (2) the intervention will not complicate the case by an excessive multiplication of the issues, and (3) the intervention is almost essential to effectively protect the intervenor’s interest. *Moody*, 411 S.W.2d at 589; *Daon Corp.*, 641 S.W.2d at 337.

Because an intervenor must have been able to have brought an action originally in order to withstand a motion to strike the plea in intervention, it is necessary to review the Texas law of standing for associations and individuals. It is also instructive to note the similarities between the standing doctrine as applied by federal courts under Article III of the U.S. Constitution and as applied by Texas state courts.

Texas employs the same standard for associational standing as used by the federal courts in construing standing under Article III of the U.S. Constitution. *Texas Association of Business v. Air Control Board*, 852 S.W.2d 440 (Tex. 1993).

Although the Texas Supreme Court has not expressly adopted the federal standard for individual standing, there are numerous cases from lower courts of appeal that indicate that the two standards are very similar. A person has standing to sue in Texas if:

he has sustained, or is immediately in danger of sustaining, some direct injury as a result of the wrongful act of which he complains; ... he has a personal stake in the controversy; ... the challenged action has caused the plaintiff some injury in fact, either economic, recreational, environmental or otherwise; ... or he is an appropriate party to assert the public's interest in the matter, as well as his own.

Cedar Chest Funeral Home v. Lashley, 889 S.W.2d 325, 329 (Tex. App.--Dallas 1993, no writ); *Precision Sheet Metal Mfg. Co. v. Yates*, 794 S.W.2d 545, 551 (Tex. App.--Dallas 1990, writ denied); *Dresser Industries, Inc. v. Snell*, 847 S.W.2d 367, 376 (Tex. App.--El Paso 1993, no writ); *Billy B., Inc. v. Board of Trustees of the Galveston Wharves*, 717 S.W.2d 156, 158 (Tex. App.--Houston [1st Dist.] 1986, no writ). This standard closely follows the federal requirements for individual standing announced in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (to have standing a plaintiff must show an injury in fact, a causal connection between the injury and the action complained of, and that the injury will be redressed by a favorable decision).

It also has long been the law in Texas that "standing consists of some interest peculiar to the person individually and not as a member of the general public." *Hunt v. Bass*, 664 S.W.2d 323 (Tex. 1984); *Mitchell v. Dixon*, 140 Tex. 520, 168 S.W.2d 654 (1943); *Yett v. Cook*, 115 Tex. 205, 281 S.W. 837 (1926); *City of San Antonio v. Strumberg*, 70 Tex. 366, 7 S.W. 754 (1888). This "special injury" rule is not unlike the limitation on standing employed in the *Defenders of Wildlife* case cited above that requires a concrete and particularized injury by the plaintiff asserting standing.

The TNRCC and Office of the Attorney General policies described in this section are the same as those in effect on the date of the initial approval of the Texas RCRA program in December 1984.

C. Recently Enacted Legislation

The EPA has indicated concerns specifically on the impact of Senate Bill 1546; The Private Real Property Preservation Act ("S.B. 14") Gov't Code, Ch. 2007; and The Environmental, Health and Safety Audit Privilege Act ("the Audit Act") on the RCRA program.

(1) SENATE BILL 1546

Senate Bill 1546, passed by the 74th Legislature in 1995, and later codified in § 5.115 of the Texas Water Code, defines an "affected person" for purposes of contested case hearings only. S.B.1546 does not affect the rights of persons to participate in the permitting process through written comment, attendance at public meetings, participation in alternative dispute resolution proceedings, or public comment at the contested case hearing. *See also* Section A of this Statement.

(2) PRIVATE REAL PROPERTY PRESERVATION ACT - SENATE BILL 14

Senate Bill 14 should not affect the TNRCC's implementation of the Texas RCRA program. Under § 2007.003(b)(4), the act does not apply to "an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by federal law or an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law." Permitting and enforcement of RCRA facilities under the RCRA program would qualify under this provision. Because the Texas RCRA program is a federally authorized program, any action taken pursuant to that authority is "taken to fulfill an obligation mandated by federal law," and the provisions of S.B. 14 do not apply to actions taken under the provisions of that program.

Furthermore, even if the § 2007.003(b)(4) provision did not apply, any action taken under the RCRA program could be covered by the exception contained in § 2007.003(b)(13). That section exempts governmental action that is "taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the health and safety purpose and does not impose a greater burden than is necessary to achieve the health and safety purpose." The protection of surface and groundwater quality from potential contamination resulting from RCRA waste disposal, transportation, or storage would seem to qualify under this provision of S.B. 14 as well.

Since S.B. 14 became law, only two lawsuits have been filed under the act in which the State or a state agency is a party, and in one of these suits, the claims that were brought pursuant to the act have been dismissed. Neither the Commission nor this office are aware of any chilling effect that the provisions of S.B. 14 have had on the Texas RCRA program.

(3) THE ENVIRONMENTAL, HEALTH AND SAFETY AUDIT PRIVILEGE ACT -
HOUSE BILL 2473

a) Provisions of the Act

The Audit Act was passed by the 74th Legislature in 1995 as H.B. 2473. The act was created to encourage voluntary compliance with environmental and health and safety laws by granting incentives to entities that voluntarily seek to determine the environmental, health and safety compliance status of their facility. *See* House Comm. on Nat. Res., Bill Analysis, Tex. H.B. 2473, 74th Leg., R.S. (1995). The law provides two types of incentives: a limited privilege for information compiled in a voluntary audit, and penalty immunity for certain violations that are self-disclosed to the regulatory agency with jurisdiction over the regulated entity. In both cases, the regulated entity must come into compliance in order to take advantage of the incentive.

The privilege created by the Audit Act generally provides that information created during a voluntary audit, including the actual audit report, any legal memoranda discussing the report, and any remedial implementation or tracking plans, are not admissible as evidence or subject to discovery in any civil, criminal or administrative proceeding. Audit Act § 5. However, the physical events of a violation are not privileged. A person who observes a violation may be compelled to testify about the event witnessed. *Id.* To take advantage of the privilege, appropriate efforts to achieve compliance must be promptly initiated and pursued with reasonable diligence after discovery of noncompliance. *Id.* § 7. The privilege does not apply if it is asserted for a fraudulent purpose. *Id.*

In addition, the privilege does not apply to the extent that it is expressly waived by the owner or operator who prepared the audit report or caused the report to be prepared. *Id.* § 6. However, disclosure by the owner or operator or the person for whom the audit report was prepared does not waive the privilege if it is made under the terms of a confidentiality agreement. *Id.* The only persons who may enter into voluntary confidentiality agreements are: 1) a partner or potential partner of the owner or operator of the facility or operation; 2) a transferee or potential transferee of the facility or operation; 3) a lender or potential lender for the facility or operation; 4) a governmental official or state or federal agency; or 5) a person or entity engaged in the business of insuring, underwriting or indemnifying the facility or operation. *Id.* If one of those parties violates a confidentiality agreement, that person is liable for damage caused by the disclosure. *Id.* These remedies for breach of a confidentiality agreement are consistent with the law of contracts.

Further, disclosure by the person for whom the audit report was prepared or by the owner or operator to a governmental official or agency under a claim of confidentiality does not waive the privilege. *Id.* It is an offense punishable by a Class B misdemeanor for a public entity, public employee, or public official to wrongfully disclose such confidential information. *Id.* However, it is an affirmative defense to the clerical dissemination of a privileged audit report that the report was not clearly labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT." Thus, the penalty provisions are solely aimed at persons who disseminate information they know is confidential or should know is confidential because it is clearly labeled as such. This remedy for wrongful disclosure of confidential information is equivalent to provisions in the Texas Public Information Act. Tex. Gov't Code Ann. § 552.352 (Vernon 1994)(providing criminal penalties for distribution of confidential information).

The following information is expressly defined as non-privileged: (1) any information required by a regulatory agency to be collected, developed, maintained, or reported under a state environmental or health and safety law; (2) information obtained by a regulatory agency through observation, sampling or monitoring; and (3) information obtained from a source not involved in the preparation of an audit report. Audit Act § 8. Information required as a result of a permit condition is incorporated in exclusion (1) above.

If there is reasonable cause to believe that a criminal offense has been committed, the Audit Act provides that the State can obtain an audit report, place it under seal, and then wait for the person claiming the privilege to request an in camera hearing. *Id.* § 9. If a hearing is not requested the privilege is waived. *Id.* If a hearing is requested then the seal is removed to allow the State to review the audit to prepare for the hearing. *Id.* The attorney representing the state may consult with

enforcement agencies in preparation for the in camera hearing. *Id.* If the court finds that information in the audit report is privileged as asserted, then such information used in preparation for the in camera review remains confidential and not subject to disclosure under the Texas Public Information Act. *Id.* The only persons who receive access to an audit report under this section are the attorneys representing the state and state enforcement agency employees. *Id.* If one of those persons wrongfully discloses confidential information, the court may find them in contempt of court and may order other appropriate relief. *Id.* Again, these remedies are equivalent to those contained in the Texas Public Information Act.

The Audit Act also provides that a person who promptly and voluntarily discloses, in writing, certain violations discovered in a voluntary audit is immune from administrative, civil and criminal penalties. *Id.* § 10. Penalties are defined as “sanctions,” and do not include a technical or remedial provision ordered by a regulatory authority. *Id.* § 3. Thus, persons may not use the Audit Act to claim immunity from emergency orders and injunctive relief.

A person must give notice to the appropriate regulatory agency of the intent to perform an audit in order to later claim immunity under the Audit Act. *Id.* § 10(g). Notices of the intent to audit are public information, as are disclosures of violations. In order to claim immunity the person who makes the disclosure must also correct the noncompliance within a reasonable time and must cooperate with the appropriate agency in connection with an investigation of the issues identified in the disclosure. *Id.* §§ 10(b)(5)-(6). The immunity does not apply to a violation that resulted in substantial harm to persons, property, or the environment. *Id.* § 10(b)(7). Nor does it apply to a repeat offender who has committed serious violations and has formed a “pattern of disregard” of environmental and health and safety laws by failing to attempt to correct non-compliance. *Id.* § 10(h).

b) Implication on Enforcement of RCRA Program Requirements

The State of Texas possesses the authority required in 40 C.F.R. § 271.16 to enforce state RCRA program requirements. The privilege and immunity incentives created by the Audit Act do not jeopardize that authority.

1. The audit privilege does not prevent the State from obtaining sufficient information about violations to issue emergency orders, obtain injunctive relief, or seek and obtain civil or criminal penalties.

The audit privilege applies only to documents and other information properly made part of an “audit report,” as defined by § 4 of the act. The physical events of the violation are not privileged, and thus even a person who participated in the preparation of an audit and observed the violation can be compelled to testify about those events. *Id.* § 5(d). Disclosures of violations under the Audit Act are public information and include descriptions of violations and the remedial actions necessary to come into compliance. Furthermore, the audit privilege is limited by the following three exceptions which protect the means by which the State may gain the information necessary for adequate enforcement.

i. No privilege exists for documents, communication, datum, or information that the State requires an alleged violator to collect, develop, maintain or report under a federal or state environmental or health and safety law. *Id.* § 8(a)(1).

The RCRA program requires facilities to develop and maintain extensive information through monitoring, testing and reporting requirements, as well as through requirements for record retention. 30 TEX. ADMIN. CODE §§ 335.9-.15.

ii. Information that a permit condition requires a regulated entity to maintain or report is included in the § 8(a)(1) exclusion and thus is not eligible for the audit privilege.

The RCRA program provides that permits shall be conditioned on the following requirements:

- 30 TEX. ADMIN. CODE § 305.125. Standard Permit Conditions. (Includes monitoring, record retention, and compliance and non-compliance reporting requirements).
- *Id.* §§ 305.127(2), (3)(c). Individual Permit Conditions. (Include monitoring, recording, and reporting requirements).
- *Id.* § 305.143. Record Retention. (Requires the permittee to maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well).

iii. Information obtained by observation, sampling or monitoring by a regulatory agency is not privileged. Audit Act § 8(a)(2).

The Audit Act does not inhibit the established powers of the State to investigate environmental concerns. The RCRA program authorizes entry onto any public or private property to inspect and investigate conditions, monitor compliance, or examine and copy records at a solid waste facility. Tex. Health & Safety Code §§ 361.032-.033; 30 TEX. ADMIN. CODE § 305.125(10). Thus, an alleged violator who has prepared an audit report cannot effectively raise the audit privilege as a bar to the State's exercise of its power to enter a regulated facility to inspect and investigate conditions surrounding an alleged violation of the RCRA program.

c) Conclusion.

The Solid Waste Disposal Act ("SWDA"), at 42 U.S.C. § 6926, requires states to meet the regulations promulgated by the EPA Administrator at 40 C.F.R., Chapter 271. Title 40 C.F.R. § 271.16 requires states to maintain adequate enforcement authority. Specifically, it requires states to have available emergency orders, injunctive relief, and criminal and appropriate civil penalties for violations of State program requirements. The Texas Water Code authorizes such remedies.

The Audit Act does not prevent the State from obtaining sufficient information about violations to impose the remedies required by 40 C.F.R. § 271.16. The State RCRA program is comprehensively regulated. The State requires, through regulations and permit conditions,

monitoring, record-keeping and reporting continuously--from construction to post-closure care. Importantly, these requirements include extensive recording and reporting of noncompliance, malfunction, and emergency situations. See 30 TEX. ADMIN. CODE §§ 305.125(9), 305.125(12), 335.9-.15, 335.153-.155. Any and all information developed as required by the State, including information maintained as required by a permit condition, is not privileged. In addition, the State maintains the authority to independently inspect conditions, monitor compliance and investigate violations. Any information acquired by the State through observation, sampling or monitoring is not privileged.

The Audit Act provides for civil penalties appropriate to the violation.

Title 40 C.F.R. § 271.16 requires that civil penalties assessed, sought, or agreed upon by the State be appropriate to the violation. EPA has expressed concern to the Commission that the Audit Act may be providing immunity from civil penalties for any violations of the SWDA, and particularly may be providing immunity from civil penalties for repeat violations, violations resulting in serious harm or risk of harm, and violations resulting in substantial economic benefit to the violator.

The Texas Legislature by its passage of the Audit Act and the Commission through its rules, regulations, and policies answers this concern. The Act expressly provides for the consideration of violations that are repeat in nature and that result in harm to the environment. Audit Act, §§ 10(b)(7) and (h).

EPA further implies that the State cannot grant immunity for any violation of the SWDA. However, EPA's Self-Policing Policy provides complete immunity where all conditions of Section D of the policy are satisfied and no significant economic benefit has resulted from noncompliance. EPA's Interim Policy on Compliance Incentives for Small Businesses ("Small Business Policy") also provides complete immunity from penalties where a small business satisfies all of the criteria in Section E of the policy except in instances where a small business "has obtained a significant economic benefit from the violation(s) such that it may have obtained an economic advantage over its competitors."

In the absence of express statutory or regulatory requirements that the states must consider in assessing civil penalties, Texas law contains provisions to ensure that penalties are appropriate to the violation and does not appear to violate the provisions of 40 C.F.R. § 271.16(c). The Audit Act expressly does not extend immunity to violations that are repeat in nature or that result in harm to human health or the environment. Audit Act §§ 10(b)(7) and (h). The Audit Act as well as the other statutory authorities referred to in this statement reflect the will of the Texas Legislature. Texas law has been and remains sufficient to carry out the provisions of the RCRA program that EPA has authorized the State to carry out.

RCRA CLUSTER IV CERTIFICATION

I hereby certify, pursuant to my authority as Attorney General and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. § 6901 *et seq.*), and 40 C.F.R. § 271 that in my opinion the laws of the State of Texas provide adequate authority to carry out the revised program set forth in the revised "Program Description" submitted by the TNRCC. The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which are in effect now. These authorities and this certification supplement the previously certified authorities described in my or my predecessors' certifications of December 4, 1989 (non-HSWA III and HSWA I); November 30, 1992 (non-HSWA VI); March 8, 1993 (non-HSWA V); June 21, 1993 (RCRA I); and August 9, 1996 (RCRA II and III). This revised Attorney General's Statement is submitted as part of RCRA Cluster IV, which incorporates regulatory changes that were promulgated from July 1993 to June 1994.

The checklists for which Texas is seeking authorization are Checklists 125-129 and 131-134. The state will seek authorization for Checklist 130, along with Checklists 112 and 122, separately. The state is now also requesting authorization for Checklists 99 and 100 from RCRA Cluster II and III for which further rulemaking was needed and the state had deferred seeking authorization.

TNRCC has authority to incorporate federal rules by reference and to adopt hazardous waste rules in general pursuant to the following statutory provisions: (1) Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended, which authorizes TNRCC to adopt any rules it deems necessary to carry out its powers and duties; (2) Tex. Health & Safety Code § 361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, which authorizes TNRCC to adopt rules to "establish minimum standards of operation for the management and control of solid waste"; and (3) Tex. Health & Safety Code § 361.078 (Vernon 1992), effective September 1, 1989, which specifically recognizes the TNRCC's authority to adopt hazardous waste rules and to issue and enforce permits to the extent necessary to receive and maintain RCRA authorization.

I. IDENTIFICATION AND LISTING

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

- (27) Listing of three chemicals from wood surface protection processes, 40 C.F.R. § 261 Appendix VIII, as amended January 4, 1994 [59 Fed. Reg. 458], Revision Checklist 128.
- (28) Listing of Beryllium (P015) is amended to read "Beryllium powder," 40 C.F.R. § 261.33 and Part 261, Appendix VIII, as amended June 20, 1994 [59 Fed. Reg. 31551], Revision Checklist 134.

Federal Authority: RCRA § 3001(b).

Citation of Laws and Regulations: Date of Adoption and Effective Date

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Texas Solid Waste Disposal Act, Chapter 361, § 361.003, Tex. Health & Safety Code Ann. (Vernon 1992), effective September 1, 1991, as amended.

Title 30 TEX. ADMIN. CODE § 335.29(5), effective November 20, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.1, effective January 26, 1994, as amended.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. State law is equivalent to federal law. With regard to the definition of hazardous waste, no rule changes are necessary because the state statutory definition of hazardous waste prospectively incorporates any federal changes to the definition of hazardous waste. Appendices to 40 C.F.R. Part 261 are separately adopted by reference in 30 TEX. ADMIN. CODE § 335.29.

BB. State statutes and regulations replace the current Second Edition (including Updates I and II) of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, by incorporating by reference the Third Edition (and its first update) of this test methods manual. Throughout the State's code, references to test methods directly refer to the methods as they are found in SW-846, as indicated in Revision Checklist 126.

Federal Authority: RCRA §§ 1006, 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014; 40 C.F.R. §§ 260.11(a); 260.22(d)(1)(i); 261.22(a)(1)&(2); 261.24(a); 261 Appendices II, III, and X; 264.190(a); 264.314(c); 265.190(a); 265.314(d); 268.7(a); 268.40(a); 268.41(a); 268 Appendices I & IX; 270.6(a); 270.19(c)(1)(iii)&(iv); 270.62(b)(2)(i)(C)&(D); and 270.66(c)(2)(i)&(ii), as amended August 31, 1993 (58 Fed. Reg. 46040).

Citation of Laws and Regulations: Date of Adoption and Effective Date

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Texas Solid Waste Disposal Act, Chapter 361, § 361.003, Tex. Health & Safety Code Ann. (Vernon 1992), effective September 1, 1991, as amended.

Title 30 TEX. ADMIN. CODE § 335.30, effective November 20, 1996.
 Title 30 TEX. ADMIN. CODE § 335.1, effective January 26, 1994, as amended.
 Title 30 TEX. ADMIN. CODE § 335.29(2), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.29(3), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.152(a)(8), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.175(c), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.112(a)(9), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.125(d), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.431(c)(1), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.431(c)(3), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 305.150, effective November 20, 1996.
 Title 30 TEX. ADMIN. CODE § 305.50(4)(A), effective November 23, 1993, as amended.
 Title 30 TEX. ADMIN. CODE § 305.172(2)(A)(iii), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 305.172(2)(A)(iv), effective November 20, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 305.572(2), effective November 20, 1996, as amended.

Has been
revised
on 4/11/97

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. State law is equivalent to federal law. The state regulations do not contain an analogous provision to 40 C.F.R. § 260.22(d)(1)(i) because the state has not obtained delisting authorization pursuant to 40 C.F.R. § 271.9(b). No rule changes concerning the identification of hazardous waste are necessary because the state statutory definition of hazardous waste prospectively incorporates any federal changes to the definition of hazardous waste.

CC. State statutes and regulations incorporate by reference "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, the Third Edition (November 1986), as amended by Updates I, II and IIA, as indicated in Revision Checklists 128 and 132.

Federal Authority: RCRA §§ 2002(a), 3001(b), and 3001(e)(1); 40 C.F.R. § 260.11(a), as amended January 4, 1994 (59 Fed. Reg. 458) and June 2, 1994 (59 Fed. Reg. 28484).

Citation of Laws and Regulations; Date of Adoption and Effective Date

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 335.29(5), effective November 20, 1996, as amended.
Title 30 TEX. ADMIN. CODE § 335.30, effective November 20, 1996.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. No remarks are necessary because state law is equivalent to federal law.

DD. State statutes and regulations increase the quantity and time limits for contaminated media used in treatability studies, as indicated in Revision Checklist 129.

Federal Authority: RCRA § 3001; 40 C.F.R. §§ 261.4(e)(2)(i)&(ii), (e)(3), (f)(3), (f)(4), and (f)(5), as amended February 18, 1994 (59 Fed. Reg. 8362).

Citation of Laws and Regulations; Date of Adoption and Effective Date

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 335.30, effective November 20, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.2(g), effective November 20, 1996, as amended.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. No remarks are necessary because state law is equivalent to federal law.

VII. NATIONAL UNIFORM MANIFEST SYSTEM AND RECORDKEEPING

F. State statutes and regulations incorporate updates to the recordkeeping instructions so that the codes used by hazardous waste treatment, storage and disposal facilities to maintain records on-site match the codes used by these facilities on the Part A Permit Application Form as indicated on Revision Checklist 131. The new handling codes for Miscellaneous Units and Boilers and Industrial Furnaces, addressed by Checklist 131, are also incorporated into the statutes and regulations.

Federal Authority: RCRA §§ 3004 and 3005; 40 C.F.R. 264 Appendix I, 265 Appendix I, as amended March 24, 1994 (59 Fed. Reg. 13891).

Citation of Laws and Regulations; Date of Adoption and Effective Date

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 335.152(a)(19)(A), effective November 20, 1996.

Title 30 TEX. ADMIN. CODE § 335.112(a)(21)(A), effective November 20, 1996.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. No remarks are necessary because state law is equivalent to federal law.

XI. GROUND-WATER MONITORING

E. State statutes and regulations allow owners and operators to demonstrate that an alternate hydraulically downgradient monitoring well location will meet 40 C.F.R. § 265.91(a)(3)(i)-(iii) criteria as specified in Revision Checklist 99.

Federal Authority: RCRA §§ 1006, 2002(a), 3001, 3004, 3005 and 3015; 40 C.F.R. §§ 264.10, and 264.91(a)(3), as amended December 23, 1991 (56 Fed. Reg. 66365).

Citation of Laws and Regulations; Date of Enactment and Adoption

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 335.112(a)(5), effective February 26, 1996, as amended.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. State law is generally

equivalent to federal law. Texas adopts by reference the requirements of 40 C.F.R. § 265.91 in 30 TEX. ADMIN. CODE § 335.112(a)(5). The state inadvertently omitted the definition of "qualified ground-water scientist" from the rule changes adopted to implement RCRA Clusters II and III. Our office has been informed by TNRCC that this definition will be added to the state rules in 30 TEX. ADMIN. CODE § 335.1 as part of the rule changes now being promulgated to implement RCRA Cluster IV.

Y. State statutes and regulations include specific Part B information requirements for surface impoundments, waste piles and landfills regarding liners; leachate collection, detection, and removal systems; and the construction quality assurance program requirements as indicated in Revision Checklist 100.

Federal Authority: RCRA §§ 3004, 3005, 3006 and 3015; 40 C.F.R. §§ 270.4(a), 270.17(b)&(c), 270.18(c)&(d), and 270.21(b)&(c), as amended January 29, 1992 (57 Fed. Reg. 3462).

Citation of Laws and Regulations; Date of Enactment and Adoption

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 305.122(a), effective November 23, 1993.

Title 30 TEX. ADMIN. CODE § 305.122(a)(1), effective November 23, 1993.

Title 30 TEX. ADMIN. CODE § 305.122(a)(2), effective November 23, 1993.

Title 30 TEX. ADMIN. CODE § 305.122(a)(3), effective February 26, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 305.50(4)(A), effective November 23, 1993, as amended.

Title 30 TEX. ADMIN. CODE § 305.69(i), B, H, J, effective February 26, 1996, as amended.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. No remarks are necessary because state law is equivalent to federal law.

XV. STANDARDS FOR FACILITIES

U. State statutes and regulations indicate that the "Uniform Customs and Practice for Documentary Credits" is a copyrighted document of the International Chamber of Commerce as indicated in Revision Checklist 133.

Federal Authority: RCRA 2002(a), 3004, 3005, and 3006; 40 C.F.R. § 264.151(d) & (k), as amended June 10, 1994 (59 Fed. Reg. 29958).

Citation of Laws and Regulations; Date of Adoption and Effective Date

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 335.152(a)(6), effective November 20, 1996, as amended.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. No remarks are necessary because state law is equivalent to federal law.

XVII. MINIMUM TECHNOLOGICAL REQUIREMENTS

C. State statutes and regulations require owners and operators of new units, expansions, and replacement units at surface impoundments, waste piles, and landfills to meet the monitoring and inspection Construction Quality Assurance (CQA) program, double liner, leachate collection and removal systems, leak detection systems, action leakage, response action plan and closure/post-closure care requirements as indicated in Revision Checklist 100.

Federal Authority: RCRA §§ 3004, 3005, 3006 and 3015; 40 C.F.R. §§ 264.19, 264.221-223, 264.226, 264.228, 264.251-264.254, 264.301-264.304, 264.310, 265.19, 265.221-265.223, 265.226-265.228, 265.254, 265.255, 265.259, 265.260, 265.301-265.304 and 265.310 as amended January 29, 1992 (57 Fed. Reg. 3462).

Citation of Laws and Regulations; Date of Enactment and Adoption

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 335.1, effective February 26, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.152(a)(1), effective February 26, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.152(a)(4), effective February 26, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.168(c), effective February 26, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.168(d), effective February 26, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.168(f), effective February 26, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.168(g)-(i), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.152(a)(9), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.169(b)(2), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.169(b)(3), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.169(b)(4), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.170(c), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.170(d), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.170(d)(1), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.170(d)(2), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.170(e), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.170(f), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.170(f)(1), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.170(f)(2), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.170(g)-(k), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.152(a)(10), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.173(c), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.173(d), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.173(d)(1), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.173(d)(2), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.173(f), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.173(f)(1), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.173(f)(2), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.173(g)-(k), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.152(a)(12), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.174(b)(3), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.174(b)(4)-(6), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.112(a)(1), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.112(a)(4), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.112(a)(10), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.112(a)(11), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.112(a)(13), effective February 26, 1996, as amended.
 Title 30 TEX. ADMIN. CODE § 335.124(a)-(d), effective May 28, 1986.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. State law is generally equivalent to federal law. In its present form, § 335.112(a)(13) of the state rules inadvertently excepts § 265.302 of the federal rules from the adoption by reference of 40 C.F.R. Part 265, Subpart N. The state intended to except §§ 265.301(f)-(i) from adoption by reference, as the requirements of those sections are addressed in §§ 335.124(a)-(d) of the state rules. The provisions currently in §§ 265.301(f)-(i) were previously located in 40 C.F.R. § 265.302. Our office has been informed by TNRCC that the state will correct the adoption by reference of 40 C.F.R. Part 265, Subpart N as part of the rule changes now being promulgated to implement RCRA Cluster IV.

The state rule provisions in 30 TEX. ADMIN. CODE § 335.124(a)-(d) are more stringent than their federal counterparts, 40 C.F.R. §§ 265.301(f)-(i), in two respects: (1) the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from a 100-year, rather than a 25-year, storm; and (2) the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100 year storm, rather than a 24-hour, 25 year-storm.

XX. STANDARDS FOR THE MANAGEMENT OF WASTE FUEL AND USED OIL AND FOR THE BURNING OF THESE MATERIALS IN BOILERS AND INDUSTRIAL FURNACES

F. State statutes and regulations are amended such that the procedures for conducting air quality modeling and screening for boilers and industrial furnaces burning hazardous wastes reference the method recommended in Appendix W of 40 C.F.R. Part 51. State regulations and statutes also incorporate by reference the October 1992 edition of "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources" as indicated in Revision Checklist 125.

Federal Authority: RCRA §§ 1006, 2002, 3001 through 3007, 3010 and 7004; 40 C.F.R. §§ 260.11(a), 266.104(e)(3), 266.106(h) and Part 266 Appendix X, as amended July 20, 1993 (58 Fed. Reg. 38816).

Citation of Laws and Regulations; Date of Adoption and Effective Date

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 335.30, effective November 20, 1996.

Title 30 TEX. ADMIN. CODE § 335.221(a)(15), effective November 20, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.221(a)(17), effective November 20, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.221(a), effective November 20, 1996, as amended.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. No remarks are necessary because state law is equivalent to federal law.

G. State statutes and regulations contain an administrative stay, until further administrative action is taken, that replaces the current limits needed to qualify for the Bevill



exemption under test number 2 with the land disposal restriction limits for underlying constituents as indicated in Revision Checklist 127.

Federal Authority: RCRA §§ 1006, 2002(a), 3004, and 3014; 40 C.F.R. § 266.112(b)(2)(i) and Part 266 Appendix VII, as amended November 9, 1993 (58 Fed. Reg. 59598).

Citation of Laws and Regulations; Date of Adoption and Effective Date

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 335.221(a)(23), effective November 20, 1996, as amended.

Title 30 TEX. ADMIN. CODE § 335.221(a), effective November 20, 1996, as amended.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. No remarks are necessary because state law is equivalent to federal law.

XXI. LAND DISPOSAL RESTRICTIONS

P. State statutes and regulations include a revision to P015 listing in the land disposal restrictions technology-based treatment standards as indicated on Revision Checklist 134.

Federal Authority: RCRA §§ 3004(d)-(k) and (m); 40 C.F.R. § 268.42(a)/Table 2, as amended June 20, 1994 (59 Fed. Reg. 31551).

Citation of Laws and Regulations; Date of Adoption and Effective Date

Tex. Water Code Ann. § 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.024 Tex. Health & Safety Code (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended.

Texas Solid Waste Disposal Act, Chapter 361, § 361.078 Tex. Health & Safety Code (Vernon 1992), effective September 1, 1989.

Title 30 TEX. ADMIN. CODE § 335.431(c)(1), effective November 20, 1996, as amended.

Remarks of the Attorney General

Section 5.103 of the Texas Water Code and §§ 361.024 and 361.078 of the Texas Health and Safety Code authorize the TNRCC to incorporate federal rules by reference. No remarks are necessary because state law is equivalent to federal law.

XXII. MEMORANDUM OF AGREEMENT (MOA)

- (1) The State has the authority to enter into the agreement,
- (2) The State has the authority to carry out the agreement, and
- (3) No applicable State statute (including the State Administrative Procedure Act) requires that the procedure be promulgated as a rule in order to be binding.

Dated: 3/11/97

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style. The first name "Dan" is written with a large, open 'D'. The last name "Morales" is written with a large 'M' and a long, sweeping tail that extends to the right.

DAN MORALES

Attorney General of the State of Texas