

US EPA ARCHIVE DOCUMENT

§ 361.001

SANITATION AND ENVIRONMENTAL QUALITY
Title 5

Law Review Commentaries

Environmental regulation of health care facilities: A prescription for compliance. Margaret M. Menicucci and Cheryl L. Coon, 47 SMU L.Rev. 537 (1994).

SUBCHAPTER A. GENERAL PROVISIONS

Administrative Code References

Natural Resource Conservation Commission, municipal solid waste, see 30 TAC § 330.1 et seq.

Law Review Commentaries

Bankruptcy—The Last Environmental Loop-hole? Debra L. Baker, 34 S.Tex.L.Rev. 379 (1993).

§ 361.001. Short Title

United States Supreme Court

Hazardous waste workers, occupational safety and health standards for training, testing and licensing, preemption, see *Gade v. National Solid Wastes Management Ass'n*, 1992, 112 S.Ct. 2374, 120 L.Ed.2d 73.

§ 361.002. Policy; Findings

Notes of Decisions

2. Construction and application

Language of Solid Waste Disposal Act (SWDA) indicated that Texas Natural Resources Conservation Commission (TNRCC) had authority to regulate transportation of solid waste for environmental purposes, rather than for purposes of preserving highways or regulating trucking, and, thus, Railroad Commission was not precluded from using its regulatory powers to assure economic health of transportation industry and overall quality and safety of state highways, even if cargo being transported was solid waste. Railroad Com'n of

Texas v. Waste Management of Texas, Inc. (App. 3 Dist. 1994) 880 S.W.2d 835, rehearing overruled, rule 130(d) motion.

Railroad Commission and Texas Natural Resources Conservation Commission (TNRCC) exercise concurrent jurisdiction over transportation of solid waste as each regulates different aspect of activity. Railroad Com'n of Texas v. Waste Management of Texas, Inc. (App. 3 Dist. 1994) 880 S.W.2d 835, rehearing overruled, rule 130(d) motion.

§ 361.003. Definitions

[See main volume for (1)]

(2) "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.

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

(4) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or

SANITATION AND ENVIRO
Title 5

production facility that gene routinely stored, processed, management unit owned, op complex.

(5) "Commission" means th

(6) "Composting" means th under aerobic conditions.

(7) "Disposal" means the di placing of solid waste or hazar on land or water so that the s be emitted into the air, disch the environment in any other

(8) "Environmental respon Response, Compensation and as amended by the Superfunc

(9) "Executive director" me

(10) "Garbage" means soli materials from the handling, I materials from markets, stora food products.

(11) "Hazardous substance"

(A) means:

(i) a substance designat Control Act, as amended

(ii) an element, compou 102 of the environmental

(iii) a hazardous waste Section 3001 of the feder 6921), excluding waste, th Act (42 U.S.C. Section

(iv) a toxic pollutant li Control Act (33 U.S.C. S

(v) a hazardous air pollh amended (42 U.S.C. Secti

(vi) any imminently haz the administrator of the Section 7 of the Toxic Su

(B) does not include:

(i) petroleum, which n otherwise specifically liste

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(ii) natural gas, natural fuel mixtures of natural g

(iii) waste materials th development, or producti substance or material reg 91.101, Natural Resources

(12) "Hazardous waste" me: the administrator of the Unite Solid Waste Disposal Act, as a 1976, as amended (42 U.S.C. S

(13) "Hazardous waste manu tures, appurtenances, and othe disposing of hazardous waste. waste management facility con:

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production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

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

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

(7) "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.

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

(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 substance":

(A) means:

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

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

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

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

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

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

(B) does not include:

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

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

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

(12) "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.).

(13) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazard-

ous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

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

(15) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

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

(17) "Local government" means:

(A) a county;

(B) a municipality; or

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

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

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

(20) "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.

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

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

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

(24) "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.

(25) "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 determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(26) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the commission under that law.

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

3

SANITATION AND ENV
Title 5

(28) "Release" means charging, injecting, escaping, or otherwise discharging, but the term does not include:

(A) a release that is not concerning a claim that

(B) an emission from a vessel, or pipeline pump

(C) a release of source as those terms are defined in Section 2011 et seq.), protection established by Act;

(D) for the purposes of response action, a release processing site designated by the Radiation Control Act (

(E) the normal applica

(29) "Remedial action" means instead of or in addition to the removal of a hazardous waste into a waste so that the hazardous waste does not present or future danger to the public includes:

(A) actions at the local level for protection using dikes, containment of hazardous waste or corrective action, segregation of reactive materials, collection of waste, or alternate water supply actions protect the public

(B) the costs of permanent relocation of the administrator of executive director determine

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(I) taking any other n public health and welfare threat of release.

(31) "Rubbish" means r

ENVIRONMENTAL QUALITY Title 5

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SANITATION AND ENVIRONMENTAL QUALITY Title 5

§ 361.003

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

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

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

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

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

(E) the normal application of fertilizer.

(29) "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.

(30) "Removal" includes:

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

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

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

(D) disposing of removed material;

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

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

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

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

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

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

§ 361.003

SANITATION AND ENVIRONMENTAL QUALITY
Title 5

(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).

(32) "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 commission.

(33) "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.

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

(A) does not include:

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

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

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

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

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

(A) does not include:

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

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

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

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

4

SANITATION AND ENVIRONMENTAL QUALITY
Title 5

(36) "Solid waste facility" means a facility for the treatment, storage, or disposal of solid waste. The term includes the design, operation, maintenance, and other improvement of the facility, including several processing, storage, and surface impoundments.

(37) "Solid waste technology" means the design, operation, maintenance, and other improvement of the facility, including standards, rules, or orders.

(38) "Storage" means the holding of solid waste, whether processed, disposed of, or otherwise.

(39) "Pollution" means any substance or material that enters the environment and renders the land or water unsuitable for the use, enjoyment, or property of the public.

Amended by Acts 1995, 74th
Leg., ch. 142, § 9604.

Municipal airports, treatment plants, and waste as defined by this section.

SUBCHAPTER 1
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Acts 1995, 74th

Natural Resource Conservation and Recovery Act, and TAC § 312.1 et seq.

§ 361.011. Commission

(a) The commission shall have the authority to regulate solid waste, excluding hazardous waste, and activities, excluding activities that are not solid waste.

(b) The commission shall have the authority to regulate the management of solid waste, by all practical and reasonable means, under this chapter and other law.

(c) The commission shall have the authority to regulate solid waste, and all other powers relating to this chapter.

(d) In matters relating to hazardous waste, the commission shall:

(1) consider water quality and ambient air quality;

(2) consult with the attorney general, whether referral is a matter of enforcement matters;

(e) If referral is determined to be necessary, the commission shall consult with the attorney general.

QUALITY
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SANITATION AND ENVIRONMENTAL QUALITY
Title 5

§ 361.011

(36) "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.

(37) "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 commission.

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

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

Amended by Acts 1995, 74th Leg., ch. 76, § 11.18, eff. Sept. 1, 1995.
142 U.S.C.A. § 9604.

Cross References

Municipal airports, treatment of hazardous waste as defined by this section, necessity of municipal permission, see Vernon's Ann.Civ.St. art. 46d-14.

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS NATURAL
RESOURCE CONSERVATION COMMISSION

Acts 1995, 74th Leg., ch. 76, § 11.19 amended the subchapter heading.

Administrative Code References

Natural Resource Conservation Commission,
sludge use, disposal, and transportation, see 30
TAC § 312.1 et seq.

§ 361.011. Commission's Jurisdiction: Municipal Solid Waste

(a) The commission is responsible under this section 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 commission 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.

(c) The commission has the powers and duties specifically prescribed by this chapter relating to municipal solid waste management, excluding management of hazardous municipal waste, and all other powers necessary or convenient to carry out those responsibilities under this chapter.

(d) In matters relating to municipal solid waste management, excluding management of hazardous municipal waste, the commission shall:

(1) consider water pollution control and water quality aspects and air pollution control and ambient air quality aspects; and

(2) consult with the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the commission's discretion, for the disposition of enforcement matters under this chapter.

(e) If referral is determined to be mandatory or appropriate, the commission shall consult with the attorney general's office for assistance in determining whether criminal or civil

LID WASTE DISPOSAL ACT
361

§ 361.024

for permits that are determined to be administratively complete, with specific deadlines for each major step in the processing of the control of the commission and hearing procedures. Deadlines under the control of the commission do not include time the commission waits for the receipt of information from an applicant in order to properly review the application. Those deadlines under control of the commission shall be met if the executive director finds that the deadline is necessary and lists the reasons that the deadline cannot be met. It is the legislature's intent that permit applicants whose applications address technologies that are most needed as determined under Section 361.0234, Health and Safety Code, as added by this article, receive an ultimate determination on an administratively complete application, favorable or unfavorable, within two years of the time the application is determined to be administratively complete, excluding time not under control of the commission.

As part of this study, the Texas Water Commission shall consider mechanisms for engaging applicants and local communities to cooperate with each other in the siting of new hazardous waste management facilities. The commission shall, at a minimum, consider the use of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant has opportunities for citizens to ask questions about the permit application or the draft application and any necessary revisions to the review process provided by Section 361.0234, Health and Safety Code. The commis-

sion shall report its findings, recommendations, and a summary of the rules adopted under Subsection (a) of this section to the legislature before January 1, 1993.

"Sec. 1.27. If necessary, the Texas Water Commission, the Texas Air Control Board, and the Texas Department of Health shall enter into memoranda of understanding to establish procedures and carry out this article.

"Sec. 1.28. If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in implementing the application procedures required under this article, the appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency."

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

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

1.024. Rules and Standards

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 jurisdiction under this chapter.

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

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.

Rules adopted by the commission under Section 361.036 and Sections 361.107-361.108 for solid waste facilities may differ according to the type or amount of hazardous waste managed and the type of waste management used.

9, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

SANITATION AND ENVIRONMENTAL QUALITY
Title 5

§ 361.026

§ 361.0235. Hazardous Waste Generated in Foreign Country

(a) Except as otherwise provided by this section, a person may not receive, transport, or cause to be transported into this state, for the purpose of treatment, storage, or disposal in this state, hazardous waste generated in a country other than the United States.

(b) This section may not be construed or applied in a manner that interferes with the authority of the federal government to regulate commerce with foreign nations and among the several states provided by Article I, Section 8, Clause 3, of the United States Constitution.

(c) This section does not apply to a person who transports or receives material from a country other than the United States for:

(1) recycling or reuse of the material; or

(2) use of the material as a feedstock or ingredient in the production of a new product.

(d) This section does not apply to waste transported or received for treatment, storage, or disposal at a hazardous waste management facility that is owned by the generator of the waste or by a parent, subsidiary, or affiliated corporation of the generator.

(e) This section does not apply to waste received by:

(1) a producer of the product or material from which the waste is generated; or

(2) a parent, subsidiary, or affiliated corporation of such producer.

(f) This section does not apply to waste generated in Mexico at an approved maquiladora facility to the extent that such waste:

(1) was generated as a result of the processing or fabrication of materials imported into Mexico from Texas on a temporary basis; and

(2) is required to be re-exported to the United States under Mexican law.

Added by Acts 1991, 72nd Leg., ch. 336, § 1, eff. Sept. 1, 1991. Renumbered from V.T.C.A., Health & Safety Code § 361.0232 by Acts 1995, 74th Leg., ch. 76, § 17.01(27), eff. Sept. 1, 1995.

United States Supreme Court

Hazardous waste, incineration of solid waste, regulation, see *City of Chicago v. Environmental Defense Fund*, 1994, 114 S.Ct. 1588, 128 L.Ed.2d 302.

§ 361.024. Rules and Standards

(a) The commission may adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of solid waste under this chapter.

[See main volume for (b) to (d)]

(e) Rules shall be adopted as provided by Chapter 2001, Government Code. As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

Amended by Acts 1993, 73rd Leg., ch. 899, § 2.06, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, § 8, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, §§ 5.95(49), 11.30, eff. Sept. 1, 1995.

Historical and Statutory Notes

1993 Legislation

Section 2.13 of Acts 1993, 73rd Leg., ch. 899 provides:

"The change in law made by Section 361.024, Health and Safety Code, as amended by this article, applies to rules in effect on or adopted on or after the effective date of this Act."

Section 18 of Acts 1993, 73rd Leg., ch. 1045 provides:

"The change in law made by Section 361.024, Health and Safety Code, as amended by this Act, applies to rules in effect on or adopted on or after the effective date of this Act."

§ 361.026. Assistance Provided by Commission

The commission may:

(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

SANITATION AND ENVIRONMENTAL QUALITY
Title 5

6
§ 361.034

(c) The amount of financial assistance granted by the state through the commission to a local government under this chapter must be matched by local government funds at least in equal amounts.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.34, eff. Sept. 1, 1995.

§ 361.032. Inspections; Right of Entry

(a) The commission may inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of solid waste.

(b) Agents or employees of 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 of the commission or commission contractors have the right to enter at any reasonable time public or private property to investigate or monitor the release or threatened release of a hazardous substance.

(d) Agents or employees of the commission or commission contractors 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.

(e) Agents or employees of the commission or commission contractors acting under this section shall observe the establishment's rules on safety, internal security, and fire protection.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.35, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 883, § 3, eff. Aug. 28, 1995

Historical and Statutory Notes

1995 Legislation

This section was amended by Acts 1995, 74th Leg., ch. 76, § 11.35. However, § 1.02(b) of Acts 1995, 74th Leg., ch. 76 provides:

"If any provision of this Act conflicts with a statute enacted by the 74th Legislature, Regular Session, 1995, the statute controls."

§ 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 industrial solid waste and hazardous waste fees authorized under Subchapter D¹ and related activities to determine the appropriateness of the fee structures;

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

(3) projections of the volume of waste by type of waste, disposition of waste, and remaining capacity or capacity used for the treatment and disposal of the waste;

(4) projections of the availability of adequate capacity in this state for the management of all types of hazardous waste generated within the state and a report of the amounts, types, and sources of hazardous waste imported into and exported from the state in the previous year;

(5) an evaluation of the progress made and activities engaged in consistent with the state's municipal solid waste management plan, in particular the progress toward meeting the waste reduction goal established by Section 361.0201(d);

(6) an evaluation of the progress made by local governments under the solid waste management plans;

(7) the status of state procurement under Section 361.426 of products made of recycled materials or that are reusable, including documentation of any decision not to purchase those products;

(8) the status of the governmental entity recycling program established under Section 361.425, including the status of collection and storage procedures and program evaluations required by that section;

(9) the status of the public education program described in Section 361.0202; and

SOLID WASTE DISPOSAL ACT
Ch. 361 -

§ 361.036

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 566, § 2.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1989, 71st Leg., ch. 703, § 2.
Acts 1989, 71st Leg., ch. 1144, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 3(h).

§ 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.

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

Revisor's Note

(1) The source law refers to the "board," which is a reference to the Texas Water Development Board. As explained in the revisor's note under Section 361.021, the responsibilities of the department of water resources, of which the Texas Water Development Board was the rule-making body, were transferred to the Texas Water Commission. Therefore, the revised law substitutes "commission" for "board."

(2) The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

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

Acts 1987, 70th Leg., ch. 279, § 18.
Vernon's Ann.Civ.St. art. 4477-7, § 13a.

§ 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.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.034

SANITATION AND ENVIRONMENTAL QUALITY Title 5

(10) recommendations to the governor and to the legislature for improving the management of municipal solid waste in the state.

[See main volume for (b) and (c)]

Amended by Acts 1993, 73rd Leg., ch. 899, § 2.07, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, § 9, eff. Sept. 1, 1993.

¹ Section 361.131 et seq.

§ 361.039. Construction of Other Laws

Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the commission, the Texas Department of Health, or a local government in performing the powers, functions, and duties vested in those governmental entities by other law.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.36, eff. Sept. 1, 1995.

SUBCHAPTER C. PERMITS

§ 361.061. Permits; Solid Waste Facility

Except as provided by Section 361.090 with respect to certain industrial solid waste, the commission may require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of solid waste under this chapter.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.37, eff. Sept. 1, 1995.

§ 361.062. Compatibility with County's Plan

(a) Before the commission 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 commission under Chapter 363 (Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act), the commission 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 commission and adopted by rule, the commission may not consider the plan and its contents in the review of an application for a solid waste facility permit.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.37, eff. Sept. 1, 1995.

§ 361.063. Preapplication Local Review Committee Process

(a) The commission shall encourage applicants for solid waste facilities 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.

[See main volume for (b)]

(c) If an applicant decides to participate in a local review committee process, the applicant must file with the commission 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 commission 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 commission shall adopt rules concerning the composition and appointment of a local review committee.

[See main volume for (e) to (g)]

SANITATION AND ENVIRONMENTAL QUALITY Title 5

(h) Except as provided by Subsection (f) are assessed against those costs. Judicial review of an application provided by Chapter 2001, Government Code, § 2001.001.

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

Amended by Acts 1995, 74th Leg., ch. 76, § 11.36, eff. Sept. 1, 1995.

§ 361.0635. Preapplication Meeting

(a) If requested by a person who provides the person an opportunity to discuss the permit application with the commission.

(b) The person must make the meeting.

(c) A meeting under this section with the commission.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.36, eff. Sept. 1, 1995.

§ 361.064. Permit Application

(a) If the commission exercises this subchapter, the commission, shall prescribe:

(1) the form of and reasonable fee for the application.

(2) the procedures for processing the application.

(b) The commission shall provide a denial of any permit application if the applicant fails to comply with the requirements.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.36, eff. Sept. 1, 1995.

Requirements 1

1. Requirements

Parties opposing issuance of permit for a solid waste facility were not prejudiced by the Commission's failure to require an applicant to show, as part of application, of waste management practices, emissions estimates, and disposal methods.

§ 361.0641. Notice to State

On receiving an application for a permit to construct, operate, or maintain a hazardous waste facility, the commission shall notify the state senator and representative for the county in which the facility is located.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.36, eff. Sept. 1, 1995.

§ 361.066. Submission of Application

(a) An applicant must submit the application if it is necessary to make the application after the applicant receives notice that the material is needed.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.36, eff. Sept. 1, 1995.

SOLID WASTE DISPOSAL ACT
Ch. 361

§ 361.064

and the Texas Air Control Board¹ shall provide the person an opportunity to meet jointly with one or more staff members of each of the agencies concerned to discuss the permit application that the person intends to file.

(b) The person must make the request in writing to the state agency with jurisdiction over the permit application that the person intends to file, and that agency shall coordinate a meeting held under this section.

(c) A meeting under this section must be held before the person files the permit application with the appropriate state agency.

(d) The department, the commission, and the Texas Air Control Board shall enter into memoranda of understanding, as necessary, to establish procedures and carry out this section.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 10, eff. Sept. 6, 1990.

¹ The Texas Air Control Board is abolished on Sept. 1, 1993, and its powers, duties, responsibilities and functions transferred to the Texas Natural Resource Conservation Commission, pursuant to Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.086.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 583, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(p).

§ 361.064. Permit Application Form and Procedures

(a) 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.

(b) Each state agency with the authority to permit a solid waste management facility shall provide a thorough and timely review of and a timely issuance or denial of any permit application for a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 11, eff. Sept. 6, 1990.

Revisor's Note

The revised law omits portions of Section 4(e) as unnecessary because those additional provisions apply without an express statement to that effect.

Historical and Statutory Notes

Prior Laws:

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

Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.

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

8

SOLID WASTE DISPOSAL ACT
Ch. 361

§ 361.079

(2) The source law refers to the department's authority to adopt rules. The revised law refers to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(iv).

§ 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,¹ 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.).

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

¹ Section 361.011 et seq. and section 361.061 et seq.

Revisor's Note

(1) The source law refers to the department's authority to adopt rules. The revised law substitutes the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

(2) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.022.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(v).

§ 361.079. Notice Concerning Receipt of Permit Application; Hearing Procedures

(a) Except as provided by Sections 361.080(b) and 361.081(c), 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) The hearings shall be conducted in accordance with the hearing rules and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SOLID WASTE DISPOSAL ACT
§ 361

§ 361.085

Historical and Statutory Notes

For Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 5.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(11).

361.085. Financial Assurance and Disclosure by Permit Applicant

(a) Before a permit may be issued, amended, transferred, extended, or renewed for a hazardous waste management facility, the commission shall require as a part of each application information it deems necessary to demonstrate that an applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including how an applicant intends to obtain financing for construction of the facility, and to close the facility in accordance with applicable rules. That information may include balance sheets, financial statements, and disclosure of relevant information regarding investors and stockholders, or information required by Title 40, Code of Federal Regulations, Part 264, Subpart H. If the information would be considered confidential under applicable law, the commission shall protect the information accordingly. During hearings on contested applications, the commission may allow disclosure of confidential information only under an appropriate protective order.

(b) The commission may order a party in a contested case permit hearing provide:

- (1) the identity of any known competitor of the applicant that has provided funding to the party for its participation in the hearing; and
- (2) the amount of that funding.

(c) 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.

(d) 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.

~~(e) 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.~~

~~(f) The agency to which the application is submitted shall require an assurance of financial responsibility as may be necessary or desirable consisting of:~~

SANITATION AND ENVIRONMENTAL QUALITY
Title 5

§ 361.085
Note 2

(b) The compliance summaries shall be made available to the applicant and any interested person after the commission 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.

[See main volume for (c)]

(d) The commission shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.48, eff. Sept. 1, 1995.

§ 361.085. Financial Assurance and Disclosure by Permit Applicant

[See main volume for (a) to (d)]

(e) The commission 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.

(f) The commission 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.

(g) Financial requirements established by the commission 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.).

(h) The commission may:

- (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.

(i) 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 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.

(j) In addition to other forms of financial assurance authorized by rules of the commission, the commission 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.

Amended by Acts 1995, 74th Leg., ch. 76, § 11.49, eff. Sept. 1, 1995.

Notes of Decisions

Amount assured 2
Degree and duration of risks 3
Finality 4

from operation of facility. *Smith v. Houston Chemical Services, Inc.* (App. 3 Dist. 1994) 872 S.W.2d 252, rehearing overruled, application for writ of error filed.

2. Amount assured

Trust-fund assurance required of applicant for permit to build solid waste facility was not required to cover operation of facility, but was required only to cover cost of its closure; Solid Waste Disposal Act did not require single form of assurance encompassing both closure costs and operations liability, but instead allowed for trust fund to assure against cost of closing facility and liability insurance to assure against claims arising

In requiring financial assurance pursuant to Solid Waste Disposal Act from applicant for permit to construct solid waste facility, Water Commission acted within its discretion in accepting standard amounts of liability insurance provided for in regulation requiring "at least" \$1 million per occurrence and \$2 million annual aggregate; Commission was not bound to determine in advance probable amount of future claims in order to calculate required amount of liability insurance. *Smith v. Houston Chemical Services, Inc.* (App. 3 Dist.

§ 361.302

SANITATION AND ENVIRONMENTAL QUALITY
Title 5

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1987, 70th Leg., ch. 279, § 12.
Vernon's Ann.Civ.St. art. 4477-7, § 8c.

§ 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.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1987, 70th Leg., ch. 279, § 7.
Vernon's Ann.Civ.St. art. 4477-7, § 4(m).

-- [Sections 361.304 to 361.320 reserved for expansion]

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