

US EPA ARCHIVE DOCUMENT

**TEXAS ATTORNEY GENERAL'S STATEMENT FOR
FINAL AUTHORIZATION FOR RCRA CLUSTER VI**

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**ATTORNEY GENERAL'S STATEMENT FOR
FINAL AUTHORIZATION FOR RCRA CLUSTER VI**

A. GENERAL INFORMATION

1. Certification

I hereby certify, pursuant to my authority as the Attorney General of the State of Texas and in accordance with Section 3006(b) of the federal Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6901 *et seq.*, and 40 C.F.R. Part 271, that in my opinion the laws of the State of Texas provide adequate authority to carry out the program set forth in the revised Program Description submitted by the Texas Natural Resource Conservation Commission (TNRCC). The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this statement is signed and which are now in effect. These authorities and this certification supplement previous Attorney General Statements.

2. Authorization History

Since the beginning of the federal hazardous waste management program, the State of Texas has continuously exercised its prerogative to participate in the Environmental Protection Agency's authorization program. Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984. It received authorization for revisions to its base program on February 17, 1987 (non-HSWA Clusters I & II). It submitted further revisions to its hazardous waste program, and final authorization of those revisions became effective on March 15, 1990 (non-HSWA Cluster III and parts of non-HSWA Cluster VI); July 23, 1990 (HSWA Cluster I); October 21, 1991 (Toxicity Characteristic Leaching Procedure); December 4, 1992 (non-HSWA Cluster IV); June 27, 1994 (non-HSWA Clusters V and VI, HSWA Cluster II, and RCRA Cluster I); and November 26, 1997 (RCRA Clusters II, III, and IV). Most recently, Texas received authorization for RCRA Cluster V which became effective on October 18, 1999.

3. Scope and Coverage

The TNRCC has rules in place necessary to implement EPA's revisions to the federal hazardous waste program made from July 1, 1995 to June 30, 1996. The revisions in Checklists 145, 148, and 150 through 152 comprise RCRA Cluster VI. In many instances, TNRCC rules already reflected the relevant federal provisions, making additional rule changes unnecessary.

4. Authorities

TNRCC has authority to incorporate federal rules by reference, *see, e.g.*, TEX. GOV'T CODE ANN. § 311.027, and to adopt hazardous waste rules in general pursuant to the following statutory provisions: (1) TEX. WATER CODE ANN. § 5.103 (Vernon 1988 & Supp. 1999), effective September 1995, as amended (TNRCC's authority to adopt any rules necessary to carry out its powers and duties); (2) TEX. HEALTH & SAFETY CODE ANN. § 361.024 (Vernon 1992 & Supp. 1999), effective September 1, 1995, as amended (authority to adopt rules necessary to "establish minimum standards of operation for the management and control of solid waste"); and (3) TEX. HEALTH & SAFETY CODE ANN. § 361.078 (Vernon 1992), effective September 1, 1989 (specifically recognizing TNRCC's authority to adopt hazardous waste rules and to issue and enforce permits to the extent necessary to receive and maintain RCRA authorization).

B. IDENTIFICATION AND LISTING

The RCRA VI Cluster includes the following regulations:

1. Liquids in Landfills III

Hazardous Waste Management; Liquids in Landfills.
Checklist 145. HSWA Provision.

State statutes and regulations provide that OECD 301B (Modified Sturm Test) may also be used to demonstrate that a sorbent is non-biodegradable as indicated in Revision Checklist 145.

Federal Authority: RCRA § 3004(c), 42 U.S.C. 6924(c); 40 C.F.R. §§ 264.314(e)(2)(ii)&(iii) and 265.314(e)(2)(ii)&(iii) as amended July 11, 1995 (60 Fed. Reg. 35703).

Texas Laws and Regulations: Date Effective

TEX. WATER CODE ANN. § 5.103 (Vernon 1988 & Supp. 1999), eff. Sept. 1, 1995, as amended.

TEX. WATER CODE ANN. § 5.105 (Vernon 1988), eff. Sept. 1, 1985.

TEX. HEALTH & SAFETY CODE ANN. § 361.017 (Vernon 1992 & Supp. 1999), eff. Sept. 1, 1995, as amended.

TEX. HEALTH & SAFETY CODE ANN. § 361.024 (Vernon 1992 & Supp. 1999), eff. Sept. 1, 1995, as amended.

30 TEX. ADMIN. CODE § 335.125(e), eff. Nov. 20, 1996 (as amended).

30 TEX. ADMIN. CODE § 335.175(e), eff. Nov. 20, 1996 (as amended).

Remarks of the Attorney General

State law is more stringent than federal law. Since 1985, TNRCC rules have not allowed the option of using sorbent to treat free liquids to be disposed of in landfills. Therefore, the federal regulations in checklist 145 concerning the nonbiodegradability of sorbent to be used to treat free liquids to be disposed in landfills have no applicability under state rules.

2. **RCRA Expanded Public Participation**
Checklist 148. Non-HSWA Provision.

State statutes and regulations provide for opportunities for public involvement in the permitting process and expand public access to information throughout the permitting process and the operational lives of facilities as indicated in Revision Checklist 148.

Federal Authority: RCRA §§ 2002, 3004, 3005, and 7004(b), 40 C.F.R. §§ 124.31, 124.32, 124.33, 270.2, 270.14(b)(22), 270.30(m), 270.61(b)(5), 270.62(b)(6), 270.62(d), 270.66(d)(3), and 270.66(g).

Texas Laws and Regulations; Date Effective

TEX. WATER CODE ANN. § 5.103 (Vernon 1988 & Supp. 1999), eff. Sept. 1, 1995, as amended.

TEX. WATER CODE ANN. § 5.105 (Vernon 1988), eff. Sept. 1, 1985.

TEX. WATER CODE ANN. § 5.501 (Vernon Supp. 1999), eff. Sept. 1, 1997.

TEX. WATER CODE ANN. § 26.011 (Vernon 1988 & Supp. 1999), eff. March 28, 1991, as amended.

TEX. HEALTH & SAFETY CODE ANN. § 361.017 (Vernon 1992 & Supp. 1999), eff. Sept. 1, 1995, as amended.

TEX. HEALTH & SAFETY CODE ANN. § 361.024 (Vernon 1992 & Supp. 1999), eff. Sept. 1, 1995, as amended.

30 TEX. ADMIN. CODE § 39.103, eff. Aug. 8, 1999 (as amended).

30 TEX. ADMIN. CODE § 305.2, eff. Aug. 8, 1999 (as amended).

30 TEX. ADMIN. CODE § 305.30, eff. Dec. 10 1998.

30 TEX. ADMIN. CODE § 305.50, eff. Nov. 20, 1996 (as amended).

30 TEX. ADMIN. CODE § 305.125, eff. Aug. 8, 1999 (as amended).

30 TEX. ADMIN. CODE § 305.172, eff. Aug. 8, 1999 (as amended).

30 TEX. ADMIN. CODE § 305.174, eff. Aug. 8, 1999 (as amended).

30 TEX. ADMIN. CODE § 305.572, eff. Aug. 8, 1999 (as amended).

30 TEX. ADMIN. CODE § 305.573, eff. Aug. 8, 1999 (as amended).

Remarks of the Attorney General

State law is equivalent to federal law.

3. **Recovered Oil Exclusion, Correction**

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste.
Checklist 150. Non-HSWA Provision.

State statutes and regulations provide that recovered oil excluded from the definition of hazardous waste at 40 C.F.R. § 261.4(a)(12) be inserted into the petroleum refining process at or before a point where contaminants are removed as indicated in Revision Checklist 150.

Federal Authority: RCRA §§ 2002 and 3001; 40 C.F.R. § 261.4(a)(12) as amended March 26, 1996 (61 Fed. Reg. 13103).

Texas Laws and Regulations; Date Effective

TEX. WATER CODE ANN. § 5.103 (Vernon 1988 & Supp. 1999), eff. Sept. 1, 1995, as amended.

TEX. WATER CODE ANN. § 5.105 (Vernon 1988), eff. Sept. 1, 1985.

TEX. HEALTH & SAFETY CODE ANN. § 361.017 (Vernon 1992 & Supp. 1999), eff. Sept. 1, 1995, as amended.

TEX. HEALTH & SAFETY CODE ANN. § 361.024 (Vernon 1992 & Supp. 1999), eff. Sept. 1, 1995, as amended.

30 TEX. ADMIN. CODE § 335.1(119), eff. April 4, 1999 (as amended).

Remarks of the Attorney General

State law is equivalent to federal law.

4. **Land Disposal Restrictions Phase III**

Decharacterized Waste Waters, Carbamate Wastes, and Spent Potliners
Checklist 151. HSWA Provision.

State statutes and regulations contain treatment standards for hazardous wastes from the production of carbamate pesticides and from primary aluminum production; contain the treatment standards for hazardous wastes that exhibit the characteristic of reactivity; and put back into place the Land Disposal Restrictions (LDR) "Third Third" provisions for the treatment of certain waste waters as indicated in Revision Checklist 151. These statutes and regulations also codify the Federal policy that combustion of inorganic waste is an impermissible form of treatment as also indicated in this checklist.

Federal Authority: RCRA § 3004(d) through (k), 3004(m); Public Law 104-119, 100 Stat. 830, 40 C.F.R. Part 268 as amended April 8, 1996 (61 Fed. Reg. 15566 and 61 Fed. Reg. 15660); April 30, 1996 (61 Fed. Reg. 19117); June 28, 1996 (61 Fed. Reg. 33680); July 10, 1996 (61 Fed. Reg. 36419); August 26, 1996 (61 Fed. Reg. 43924), and February 19, 1997 (62 Fed. Reg. 7502).

Texas Laws and Regulations; Date Effective

TEX. WATER CODE ANN. § 5.103 (Vernon 1988 & Supp. 1999), eff. Sept. 1, 1995, as amended.

TEX. WATER CODE ANN. § 5.105 (Vernon 1988), eff. Sept. 1, 1985.

TEX. HEALTH & SAFETY CODE ANN. § 361.017 (Vernon 1992 & Supp. 1999), eff. Sept. 1, 1995, as amended.

TEX. HEALTH & SAFETY CODE ANN. § 361.024 (Vernon 1992 & Supp. 1999), eff. Sept. 1, 1995, as amended.

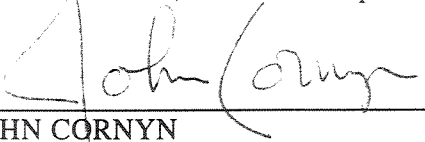
30 TEX. ADMIN. CODE § 335.431, eff. April 4, 1999 (as amended).

Remarks of the Attorney General

State law is more stringent than federal law. State law has no provision equivalent to 40 C.F.R. § 268.44(a), under which EPA may assure a variance from an applicable treatment standard.

5. **Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision**
Imports and exports of Hazardous Waste: Implementation of OECD Council Decision C(92)39 concerning the control of transfrontier movements of Waste Destined for Recovery Operations. Checklist 152. HSWA Provision.

EPA, for constitutional reasons, does not allow States to receive authorization to control exports of hazardous waste subject to 40 C.F.R. Part 262, Subpart H. Therefore, the State of Texas is not required to complete an Attorney General's statement for Checklist 152. However, State law is equivalent to federal law.



JOHN CORNYN
Attorney General of Texas

11/2/99

Date