

US EPA ARCHIVE DOCUMENT



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

RCRA CLUSTER VI PROGRAM AUTHORIZATION REVISION

SPA 17: Checklists 145, 148, and 150-152

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STATE OF TEXAS
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
INDUSTRIAL AND HAZARDOUS WASTE DIVISION
RCRA CLUSTER VI

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**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
RCRA CLUSTER VI AUTHORIZATION PACKAGE**

SUMMARY

This RCRA Cluster VI Authorization Package has been developed by the staff of the Texas Natural Resource Conservation Commission's ("TNRCC" or "commission") federally authorized program.

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 the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. §6901 *et seq.* (1976) on December 26, 1984. Texas received authorization for revisions to its base program on February 17, 1987 (non-HSWA Clusters I & II). Texas 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 (TCLP); December 4, 1992 (non-HSWA Cluster IV); June 27, 1994 (non-HSWA Clusters V and VI, HSWA Cluster II, and RCRA 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.

In order to receive and maintain authorization, it is necessary for the commission to have regulations that meet the minimal standards of federal programs to be administered by EPA. Therefore, the TNRCC has adopted rule amendments necessary to implement revisions to the federal hazardous waste program which were made by EPA from July 1, 1995 to June 30, 1996. The revisions in Checklists 145, 148, and 150 - 152 comprise RCRA Cluster VI.

In accordance with the requirements of 40 CFR §271.21 entitled *Procedures for Revision of State Programs*, this RCRA Cluster VI Authorization Program Revision provides a revised program description, Attorney General's statement, and Memorandum of Agreement.

A state approved for final authorization administers and enforces its hazardous waste program in lieu of the federal program, therefore (a) promoting consistency in implementation of the program, (b) eliminating the burden on industry and the public from following dual regulation which is imposed by a separate federal program, (c) making use of experienced state personnel with background knowledge of regional conditions for program operation, and (d) allowing the use of federal grant funds for efficient and effective program operation.

For these reasons, the commission (through its predecessor agencies) sought, received, and maintained hazardous waste program authorization. Through this submission of the RCRA Cluster VI Authorization Program Revision, the commission hereby requests approval and authorization.

**PROGRAM DESCRIPTION
STATE OF TEXAS
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
RCRA PROGRAM - CLUSTER VI**

I. INTRODUCTION

A. HISTORY OF ENVIRONMENTAL REGULATION IN TEXAS

From 1965 to 1993, the Texas Air Control Board was responsible for air quality regulation in Texas. Prior to September 1, 1985, the Texas Department of Water Resources had responsibility for water resource protection and management. On September 1, 1985, the Texas Water Commission assumed primary responsibility for protecting Texas' water resources. In addition, jurisdiction over the municipal solid waste management functions of the Texas Department of Health was transferred to the Texas Water Commission on March 1, 1992. Effective September 1, 1993, the Texas Natural Resource Conservation Commission assumed jurisdiction over most environmental regulation in Texas.

B. THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Under the Texas Solid Waste Disposal Act (codified in Chapter 361 of the Texas Health and Safety Code), the Texas Natural Resource Conservation Commission (the "Commission" or "TNRCC") has the primary responsibility for the administration of laws and regulations concerning hazardous waste. The TNRCC combined the functions of two former agencies, the Texas Water Commission and the Texas Air Control Board. The combined commission has over 2,800 employees, fifteen regional field offices, and has regulatory oversight for protecting air, water, and land resources in Texas from pollution. Pursuant to section 91.602 of the Texas Natural Resources Code, the Railroad Commission of Texas has jurisdiction over oil and gas hazardous waste.

C. RCRA AUTHORIZATION

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 the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. §§6901 *et seq.* (1976) on December 26, 1984. Texas received authorization for revisions to its base program on February 17, 1987 (non-HSWA Clusters I & II). Texas 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 (TCLP); December 4, 1992 (non-HSWA Cluster IV); June 27, 1994 (non-HSWA Clusters V and VI, HSWA Cluster II, and RCRA I). Most recently, Texas received authorization for RCRA Clusters II, III, and IV on November 26, 1997. Texas has received authorization for RCRA Cluster V which became effective on October 18, 1999.

This Program Description has been prepared in accordance with the requirements of 40 CFR § 271.6.

**PROGRAM DESCRIPTION
STATE OF TEXAS
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
RCRA PROGRAM - CLUSTER VI**

I. INTRODUCTION

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This Program Description has been prepared in accordance with the requirements of 40 CFR § 271.6.

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Program
Description

PROGRAM DESCRIPTION

STATE OF TEXAS

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

RCRA PROGRAM

RCRA CLUSTER VI

PROGRAM DESCRIPTION
STATE OF TEXAS
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
RCRA PROGRAM - CLUSTER VI

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**PROGRAM DESCRIPTION
STATE OF TEXAS
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
RCRA PROGRAM - CLUSTER VI**

I. INTRODUCTION

A. HISTORY OF ENVIRONMENTAL REGULATION IN TEXAS

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B. THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

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C. RCRA AUTHORIZATION

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 the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. §§6901 *et seq.* (1976) on December 26, 1984. Texas received authorization for revisions to its base program on February 17, 1987 (non-HSWA Clusters I & II). Texas 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 (TCLP); December 4, 1992 (non-HSWA Cluster IV); June 27, 1994 (non-HSWA Clusters V and VI, HSWA Cluster II, and RCRA I). Most recently, Texas received authorization for RCRA Clusters II, III, and IV on November 26, 1997. Texas has also received authorization for RCRA Cluster VI which became effective on October 18, 1999.

This Program Description has been prepared in accordance with the requirements of 40 CFR § 271.6.

II. PROGRAM SCOPE, STRUCTURE, AND COVERAGE

The TNRCC has adopted rules necessary to implement revisions to the federal hazardous waste program which were made from July 1995 to June 1996. The revisions in Checklists 145, 148, and 150 - 152 comprise RCRA Cluster VI.

The RCRA VI Cluster includes the following regulations:

1. Liquids in Landfills III
Hazardous Waste Management; Liquids in Landfills.
Checklist 145. HSWA Provision.
2. RCRA Expanded Public Participation
Checklist 148. Non-HSWA Provision.
3. Recovered Oil Exclusion, Correction
Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste.
Checklist 150. Non-HSWA Provision.
4. Land Disposal Restrictions Phase III:
Decharacterized Waste Waters, Carbamate Wastes, and Spent Potliners
Checklist 151. HSWA Provision.
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.

III. STATE AGENCY RESPONSIBILITIES

A. THE TNRCC & RRC AGENCIES

In 1980, RCRA was amended to exempt from Subtitle C regulation drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.¹ At the time of the amendments, and over the next several years, these "other wastes" which were exempted from RCRA Subtitle C included all oil and gas waste under the Railroad Commission (RRC) jurisdiction.² In 1985, the State of Texas understood that EPA had yet to interpret the exemption for drilling fluids, produced waters, and other associated wastes. The state also understood that the exemption might be narrowed. Therefore, the State of Texas amended the definition of oil and gas waste to exclude hazardous wastes from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants, in the belief that this class of wastes encompassed all the wastes that might be determined to be beyond the scope of RCRA. In its 1988 regulatory determination,³ EPA interpreted the exemption to be narrower, in some respects, than the State of Texas had anticipated. EPA found that the exemption applied only to wastes intrinsically related to the exploration, development, and production of oil, gas, and geothermal resources. EPA determined that certain wastes previously believed to be covered by the exemption were, in fact, subject to hazardous waste regulation. EPA's regulatory determination lists some of the oil and gas wastes that are subject to RCRA Subtitle C. In accordance with the law of the State of Texas, these are oil and gas wastes which are regulated by the RRC.

1. The Texas Natural Resource Conservation Commission

The TNRCC has jurisdiction over "solid waste;" therefore, TNRCC regulates 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.⁴ TNRCC's jurisdiction includes hazardous substances.⁵

¹ See 42 U.S.C. §6921(b)(2)(A)(1995).

² See 45 Fed. Reg. 85016, 85020 Texas: Phase I Interim Authorization of State Hazardous Waste Management Program (EPA 1980). In this approval of the of the State's program. EPA states that "the jurisdiction of the Texas Railroad Commission covers areas which are currently excluded from its [EPA's] regulatory authority under 40 CFR Part 261."

³ Regulatory Determination for Oil and Gas Geothermal Exploration, Development and Production Wastes, 53 Fed. Reg. 25446 (EPA 1998).

⁴ See Tex. Health & Safety Code Ann. § 361.003(34) (Vernon 1992 and Supp. 1998).

⁵ Id. § 361.003(34)(B)

However, solid waste under the jurisdiction of the TNRCC 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.*).⁶

At the time the EPA delegates RCRA authorization to the RRC, jurisdiction over waste, substance, or material that 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 (EPA) 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.*) will transfer from the TNRCC to the RRC.

The TNRCC has never requested, nor has it ever been granted, RCRA authorization for oil and gas hazardous waste. Because the Texas Legislature has assigned jurisdiction of oil and gas wastes to the Railroad Commission (RRC), the statutory authority for regulation of such waste lies with the RRC.

2. The Railroad Commission

Generally, the RRC has jurisdiction over the discharge, storage, handling, transportation, reclamation, or disposal of waste materials (both hazardous and non hazardous) that result from the activities associated with the exploration, development, or production of oil or gas or geothermal resources and other activities regulated by the RRC.⁷ Activities associated with the exploration, development, or production of oil or gas or geothermal resources are:

- (a) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;
- (b) the production of oil or gas or geothermal resources, including:
 - (1) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;
 - (2) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of RRC to regulate the production of oil or gas or geothermal resources;
 - (3) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;
 - (4) activities associated with any underground natural gas storage facility

⁶ *Id.* at § 361.003(34)(A)(i-iii).

⁷ See generally *Tex. Nat. Res. Code Ann Title 3 (Vernon 1998); Texas Water Code Ann. § 26.131 and Ch. 27 (Vernon 1988 and Supp. 1998).*

- (5) activities associated with any underground hydrocarbon storage facility;
- (6) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;
- (c) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the RRC to regulate the exploration, development, and production of oil or gas or geothermal resources; and
- (d) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in the foregoing paragraphs, except for waste generated in connection with processing plants, pressure maintenance plants, or repressurizing plants if the waste is defined as hazardous waste by EPA.⁸ Hazardous wastes generated at natural gas, or natural gas liquids processing plants, or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TNRCC until the RRC is authorized by EPA to administer RCRA. When the RRC is authorized, jurisdiction over such hazardous waste will transfer from the TNRCC to the RRC.

B. MOU BETWEEN RRC AND TNRCC

By statutory requirement,⁹ a Memorandum of Understanding (MOU) has been developed between the TNRCC and the RRC to effectively coordinate Texas' regulatory program over the jurisdiction of waste materials. The MOU has been adopted by rule¹⁰ and describes the division of responsibilities, as well as the procedures for coordination, between the two agencies. The current MOU is attached.

C. DIVISION OF RESPONSIBILITY BETWEEN TEXAS AND EPA

The TNRCC has never requested, nor has it ever been granted, RCRA authorization for oil and gas hazardous waste. Because the Texas Legislature has assigned jurisdiction of oil and gas wastes to the RRC, the statutory authority for regulation of such waste lies with the RRC. Until EPA delegates RCRA authority to the RRC, the EPA is responsible for the regulation of hazardous waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy. As well, EPA is responsible for the regulation of hazardous waste for which the TNRCC has not been previously authorized.

⁸ See 16 TAC § 3.8(a)(30) and TNRCC Definitions at 30 TAC 335.1.

⁹ See Texas Solid Waste Disposal Act, Texas Revised Civil Statutes, art. 4477-7; House Bill 1407, Section 10, 67th Texas Legislative Session (1981).

¹⁰ See TNRCC's rule at 30 TAC § 7.117 which is an adoption by reference of the RRC's rule at 16 TAC § 3.30.

IV. STRUCTURE & PROCESSES OF THE TNRCC ¹¹

A. THE COMMISSION

Three full-time commissioners are appointed by the governor to establish overall agency direction and policy, and to make final determination on contested permitting and enforcement matters. As well, they perform the legislative and judicial functions of the TNRCC. The commissioners are appointed for staggered six-year terms by the governor with the advice and consent of the Texas Senate. A commissioner may not serve more than two six-year terms. The governor also appoints the chairman of the Commission.

The Commission meets as necessary to render decisions concerning matters within its jurisdiction, including permits and other authorizations. The Commission also establishes the general policies of the agency and adopts the rules necessary to carry out the statutory responsibilities of the Commission. The Commission employs an executive director and seven deputy directors to administer agency programs. The Commission also appoints a general counsel, a chief clerk, and a public interest counsel.

B. OFFICES THAT REPORT TO THE COMMISSIONERS

In addition to the General Counsel, five offices report directly to the Commissioners: Alternative Dispute Resolution, Chief Clerk, Internal Audit, Office of Public Assistance, and the Public Interest Counsel. The General Counsel is the chief legal advisor to the three commissioners. The internal structure of the office includes the General Counsel, several assistant general counsels, and support staff.

1. General Counsel's Office

The General Counsel is the chief legal advisor and the chief ethics advisor for the agency. The Office of the General Counsel (OGC) provides legal assistance and advice to the Commissioners concerning their review of permits, registrations, and other authorizations, proposed enforcement actions, rule making actions, and other general matters that come before the commission for consideration. The OGC also oversees the scheduling and management of the Commissioners' meetings. In addition, the General Counsel manages the administrative affairs of the OGC, and the other offices in the commissioners' cluster.

¹¹ **Business Process Review** The TNRCC has undertaken an on-going Business Process Review (BPR) to assess key work processes and to recommend process improvements. The study focused on three major areas: (1) permitting, (2) compliance, and (3) planning and assessment. The TNRCC BPR Steering Group is comprised of a cross section of senior management and non-management staff, representing all TNRCC offices. This group is currently evaluating the existing processes, alternatives, and recommendations and will develop the initiatives for implementing the innovations and the process improvements. Although the structure and processes of the TNRCC are subject to change, attention is being taken to prevent jeopardy of the federally delegated programs. The current TNRCC Organizational Map is enclosed with this RCRA Cluster VI Program Revision. For additional information regarding the BPR, please see the TNRCC web page. or contact John Steib, Project Manager at (512) 239-5718.

2. Alternative Dispute Resolution

The Alternative Dispute Resolution (ADR) Office provides a framework for the use of mediation in order to resolve multiple-party disputes that arise primarily in Commission contested case hearings. The ADR office utilizes trained third-party neutrals, or mediators, who facilitate communications between participants and conduct mediation meetings. The goal of the ADR process is to resolve disputes without the necessity of a formal contested case hearing. To achieve this goal, the mediator first facilitates communication between potential and/or named parties to a dispute, and educates participants about their ADR options. If all participants agree to use mediation, the mediator then conducts one or more mediation meetings, and assists the participants in the drafting and filing of a settlement agreement, if one is reached. In addition, the ADR office ensures that all ADR procedures are carried out in a timely manner so as not to delay any public hearing.

3. Chief Clerk

The Chief Clerk is responsible for ensuring proper and timely issuance, publication, and posting of required notices of application, public hearings, and public meetings concerning matters that are being processed and/or heard by the Commission. The public notice and hearing processes of the Commission are discussed in greater detail, *infra*. After formal action by the Commission on permit applications and other matters, the Chief Clerk's Office transmits the final decision documents to applicants and other parties. In addition, the Chief Clerk is designated as custodian of records of Commission proceedings and is responsible for maintaining the official recordings of Commission meetings.

4. Internal Audit

The Internal Audit staff conducts financial and operational audits of agency operations. The Internal Audits Section improves efficiency of agency operations, assess effectiveness of the agency's system of internal accounting and operating controls, ensures compliance with state and federal requirements, and safeguards agency assets.

5. Office of Public Assistance

The Office of Public Assistance (OPA) was created to provide citizens greater assistance and access to information related to permitting and the permitting process. The commissioners established the OPA as a one-stop central location where the general public can ask about agency permits and permitting processes, express their concerns, and obtain information on that subject. The OPA has established a toll-free number (1-800-687-4040) to provide individual members of the public with an easy-to-reach, centralized point of contact. Every public notice of a permit application contains a statement advising concerned citizens to call OPA with their questions and lists the toll-free telephone number. The OPA assists citizens in understanding the permit public participation processes that are available and the requirements for requesting a contested evidentiary hearing.

6. Office of Public Interest Counsel

The Office of Public Interest Counsel was created by the legislature to ensure that the public interest is represented in contested matters heard by the Commission. The office is headed by the Public Interest Counsel, who is appointed by the Commission, and who is assisted by several assistant public interest counsels. The office participates in hearings to develop the evidence presented on environmental and consumer protection issues. Although the counsel does not serve as an attorney for people who wish to participate in a hearing, the counsel may assist individuals by explaining hearing procedures or legal issues that may arise, and by ensuring that individuals are able to participate meaningfully and that issues of concern to them are presented.

C. THE EXECUTIVE DIRECTOR'S OFFICE

The Executive Director manages the day-to-day administration of the agency. The Executive Director, aided by a Deputy Executive Director, oversees several deputy directors who are responsible for the administration of the agency's programs. In addition, several offices report directly to the Executive Director.

1. Small Business and Environmental Assistance

Small Business and Environmental Assistance is a resource to help Texas' small businesses industries and local governments achieve voluntary compliance with environmental regulations through a better understanding of pollution prevention, recycling, and the Commission's compliance and enforcement processes. For example, this office is charged with the development of workshops and written materials concerning the proper storage, transportation, and disposal of hazardous waste. Small Business and Environmental Assistance provides confidential environmental technical assistance without the threat of enforcement action. Staff provide pollution prevention and compliance assistance to the regulated community. Among the Divisional priorities are small business and local government assistance, on-site technical assistance, and environmental public awareness programs. Services include regulatory assistance seminars, technical workshops, trade fairs, waste collection events, toll free hotline assistance and recognition of environmental excellence.

2. Intergovernmental Relations

Intergovernmental Relations provides information to the legislature about TNRCC activities and to the TNRCC about legislative priorities and initiatives. The division also addresses constituent concerns for legislators, develops legislative proposals needed by the agency, ensures that new legislation is implemented by the agency, and provides a point of contact for legislators, lobbyists, and trade associations.

3. Agency Communications

Agency Communications is divided into two sections: Media Relations and Publishing. Media Relations coordinates development of the agency's response to media inquiries and other agency communications with parties outside the agency. The division also provides research, writing, and production oversight as needed for internal and external agency-level communications. Finally, the division coordinates efforts of the Commissioners and the executive staff to communicate information and build support for TNRCC programs, regulations, and initiatives. The Publishing Section develops information initiatives directed toward all areas of the public. This division manages the Commission's library, which is the largest water-related library in the nation not affiliated with a university. Along with the Publishing Section, the Graphics Section coordinates the production of all agency publications and other printed materials.

4. Chief Engineer

The Chief Engineer provides technical quality assurance for a range of regulatory activities including permitting, rule development, and pollution cleanup. The Chief Engineer also serves as a chief technical advisor to the Executive Director and chairs the Commission's Senior Technical Council. In addition to the technical oversight role, the Chief Engineer directs the Proposition 2 Section, the Innovative Technology program, and the Toxicology and Risk Assessment Section. The Chief Engineer oversees the TNRCC's technical peer review process which provides agency managers and supervisors with the tools to identify appropriate issues, gather the right mix of people into a review team, resolve the issues, and document resolutions.

The Toxicology & Risk Assessment Section provides toxicological expertise in the areas of technical review of permit applications, evaluation of environmental monitoring data, multimedia risk assessment activities, and emergency response activities.

The Proposition 2 Use Determination section is charged with implementing House Bill 1920, passed during the 73rd Legislature. House Bill 1920 provides a property tax exemption for property that a facility installs in response to an environmental rule, regulation, or law. The TNRCC is charged with determining if the installed property is considered to be a pollution control device.

The Innovative Technology program seeks to identify and encourage the use of new technologies that can bring about improvement to Texas' environment in a cost-effective manner. The program supports approved processes for technology demonstrations, permits, and projects; and promotes rule revision where necessary.

D. OFFICES OF THE TNRCC

There are five offices under the Executive Director's administration including the Office of Permitting, the Office of Compliance and Enforcement, Office of Legal Services, Office of Administrative Services, and the Office of Environmental Policy, Analysis and Assessment.

1. Office of Permitting

The Office of Permitting is comprised of several Divisions: Air Permits, Registration and Evaluation, Remediation, Waste Permits, and Water Permits and Resource Management. While the Waste Permits, Remediation, and Registration & Evaluation Divisions are most significant to the RCRA Program, information regarding the Air Permits and Water Permits & Resource Management Divisions have also been included for convenience.

a. Waste Permits Division

Both the industrial and municipal waste programs were created as a result of the passage of the Texas Solid Waste Disposal Act (currently Chapter 361 of the Texas Health and Safety Code) in 1969 to address the management of solid waste within the State of Texas. The programs were modified as a result of the passage of federal legislation and regulations addressing hazardous and municipal waste.

The Industrial and Hazardous Waste (IHW) Permits Section is responsible for managing and administering waste related programs and requirements for the permitting of hazardous waste treatment, storage, and disposal facilities, and off-site industrial nonhazardous waste storage and treatment facilities. The permitting requirements include design and operational requirements as well as closure and post-closure care, financial assurance, and groundwater monitoring. The IHW Permits Section is also responsible for industrial solid waste characterization and classification, industrial solid waste recycling notices, variances and exclusions from solid waste, and tracking of used oil.

The Municipal Solid Waste (MSW) Permits Section is responsible for managing and administering waste related programs and requirements for the permitting and registration of municipal solid waste facilities and activities for such facilities as landfills, liquid waste processing facilities, incinerators, transfer stations, material recovery facilities, medical waste treatment facilities, and composting facilities. The MSW Permits Section is also responsible for the permitting of commercial industrial nonhazardous waste landfills.

The Underground Injection Control (UIC) and Radioactive Waste (URW) Section is responsible for the UIC well permitting program for Class I and III wells, the UIC well registration program for Class V wells, monitoring the prohibition of Class IV wells, the surface casing program, licensing of on-site buried radioactive waste sites, and licensing of commercial low-level radioactive waste disposal sites. The URW Section regulates the operation, design, and maintenance of Class I wells which inject hazardous and nonhazardous waste; Class III wells which inject fluids for extraction of minerals (solution mining of uranium, sodium sulfate, and sulfur); and Class V wells (all injection wells not classified as a Class I, II, III, or IV well). The URW Section also inspects UIC Class I and Class III underground injection wells to ensure that the facilities operating such wells are in compliance with applicable rules and regulations governing mechanical integrity of the well and other operational factors such as injection pressure and volume. In addition, groundwater is monitored at Class III mining sites to ensure that groundwater quality is not degraded. The URW Section is also responsible for inspection of buried radioactive waste sites as well as any commercial low-level radioactive waste disposal site licensed in the future.

The URW Section also advises the oil and gas industry, Railroad Commission, and other state agencies on ground water protection. The Surface Casing program determines at what depths usable quality water will be penetrated in oil, gas, cathodic protection, Class II disposal wells, and seismic shot holes. This program also advises the Railroad Commission on the use of protected waters for enhanced oil production by underground injection.

The Radioactive Waste Disposal program was created on March 1, 1992 through legislation which transferred jurisdiction for disposal of radioactive substances to the Texas Water Commission and subsequently to the TNRCC upon its formation on September 1, 1993. Texas is under an agreement state status with the federal Nuclear Regulatory Commission (NRC) for its Radioactive Waste Disposal Program. Jurisdiction is divided between the TNRCC and the Texas Department of Health, specifically the Bureau of Radiation Control (BRC). The TNRCC has jurisdiction over disposal of radioactive waste; the Department of Health has jurisdiction over transportation, recycling, storage, and handling of radioactive waste. TNRCC has jurisdiction over the low-level radioactive waste sites with buried radioactive waste. These sites are licensed rather than permitted.

In general, all of these programs serve the public and the facilities which store, process, or dispose of solid waste or which dispose of or have buried low-level radioactive waste.

The IHW program assists primarily large industries and commercial hazardous waste management companies. The MSW program is associated with the management of non-hazardous municipal waste (including municipalities and commercial waste management companies), and commercial waste management companies with industrial non-hazardous waste landfill applications. The UIC program assists industries include chemical manufacturing; petroleum and metals refining; beef packing; commercial waste management; and solution mining of uranium, sodium sulfate, and sulfur. The Surface Casing program assists the oil and gas industry, Railroad Commission, and other state agencies requiring ground water protection depths. The Buried Radioactive Waste program is associated with licensed sites where radioactive material is buried, sites where burial is ongoing, as well as inactive sites. The only eligibility requirement to fall under the program is the presence of on-site buried radioactive material that has not been formally decontaminated or decommissioned to decontamination standards specified in the current rules. The Commercial Low-Level Radioactive Waste Disposal program provides for licensing to construct, operate, and close commercial facilities for disposal of low-level radioactive waste (LLW) generated in the three states that form the Texas Compact, (Maine, Vermont, and Texas).

b. Remediation Division

The Remediation Division is responsible for the cleanup of releases of hazardous waste and pollutants so that threats to human health and the environment are controlled or eliminated. Division programs address leaking petroleum storage tanks, hazardous and nonhazardous industrial waste sites, state and federal Superfund sites, voluntary cleanups, innocent owner/operator certifications, and state Brownfields initiatives. The division oversees investigative and remedial activities conducted by agency contractors, responsible parties, owner and operators, and third parties.

The key functions of the Remediation Division are as follows:

The Corrective Action Program observes remediation of soil and groundwater contamination at industrial facilities. The program performs this function to assure that the public is not exposed to hazardous levels of chemicals by requiring removal or mitigation of the contamination to levels protective of human health and the environment.

The federal Superfund law provides broad authority to respond directly to releases by cleaning up abandoned or uncontrolled hazardous waste sites which may endanger public health or the environment. In 1985 the Texas legislature created the State Superfund Cleanup Program to address sites which did not qualify for the federal Superfund list. Regulations governing federal and state Superfund sites provide protection to the public by holding responsible parties liable for contamination and cleanup and providing for the use of public funds for cleanup when responsible parties are unwilling or unable to pay.

The Voluntary Cleanup Program provides incentives to participants for investigation, cleanup and redevelopment of properties with contamination. In return, future lenders and landowners, local governments, public and private lending institutions, developers and other stakeholders gain statutory protection that limits their liability to the state regarding past contamination at a site.

The Innocent Owner/Operator Program (IOP) provides an opportunity for applicants to be considered an innocent owner or operator if the property became contaminated as a result of a release from sources not located on the property. The agency issues a certification to the applicant which ensures protection from liability for further investigation, monitoring, or remediation of the site.

Brownfields are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by environmental contamination. The goal of the Brownfields Program is to assist local governments and non-profit organizations with revitalization and re-utilization of contaminated property.

The Technical Support Section provides technical support to the remediation programs. The Section oversees the development and implementation of the Texas Risk Reduction Rule program and provides support for groundwater modeling and quality assurance/quality control for data submitted to the agency. This Section also assists with contract development for the Remediation Division.

The Site Assessment and Management Section screens abandoned sites for placement on state and federal Superfund lists. The Section performs removals at Superfund sites where immediate action is necessary to protect human health and the environment, oversees state funded cleanups of leaking petroleum storage tank sites, and represents the TNRCC as one of three agencies designated by the Governor under the federal Superfund law as a state Natural Resource Trustee. The other two agencies that serve as trustees are the Texas Parks and Wildlife Department and the General Land Office. The Trustee program acts on behalf of the public to seek compensatory restoration for damages to natural resources from releases of oil and hazardous substances.

The PST Responsible Party Remediation Section directs responsible tank owners and operators with leaking petroleum storage tanks to abate releases, perform site assessments, and remediate contaminated soil and groundwater. This Section also reviews and pre-approves plans for all phases of corrective action to control remediation costs and to ensure that owners and operators can be reimbursed without delay.

The Contracting Section procures contractors and oversees payment of contractor invoices for the petroleum storage tank, Superfund, voluntary cleanup, air permitting, and water programs.

c. Registration and Evaluation Division

The Registration and Evaluation Division consists of the following sections: PST Reimbursement, Technical Services, and Registration; Permits Administrative Review; and Registration and Reporting.

The Petroleum Storage Tank (PST) Reimbursement Section reviews and processes eligible owner/operator applications for reimbursements for leaking petroleum storage tank corrective action expenses. The PST program was created in response to federal laws enacted in 1984 creating regulations governing underground tanks. Statutes and regulations governing this activity allow the agency to maintain and protect the quality of groundwater and surface water resources in the state from petroleum storage tank releases. The state created a fund to reimburse the cost of cleanup of sites where releases have occurred from PSTs resulting in impacts to soil and groundwater.

PST Technical Services Section maintains registration and construction information for underground and aboveground petroleum storage tanks, provides technical assistance and outreach for tank owners and operators, and oversees Stage II vapor recovery activities in ozone nonattainment areas.

The Registration & Reporting Section is responsible for managing the regulatory activities associated with registrations and reporting, and for providing any technical assistance needed by facilities to comply with these requirements. The section registers generators and transporters of hazardous and industrial solid waste, medical waste transporters; scrap tire generators, transporters, and storage facilities, used oil handlers, collection centers, used oil filter handlers, medical waste treatment units and sludge, grit trap, grease trap and septic waste transporters. Registration and tracking of Industrial and Hazardous Waste facilities is required by the Texas Solid Waste Disposal Act (currently Chapter 361 of the Texas Health and Safety Code) which was passed in 1969 to address the management of solid waste within the State of Texas.

The Medical Waste Transporter Program was created with the promulgation of Texas Department of Health regulations in 1989 under the authority of the Texas Solid Waste Disposal Act of 1969. The regulations and statutes outline general procedures and requirements for persons who generate, collect, store, process, treat or dispose of special waste from health care related facilities.

The Waste Tire program was created in 1991. Regulations require transporters, processors, and storage sites to register with the TNRCC. The rules also require the use of a manifest system which provides a paper trail tracking tires from the "cradle to grave."

The Used Oil Program was mandated by federal legislation in 1992 amending RCRA. The used oil filter program was created in 1994 through TNRCC regulations. Statutes and regulations allow the TNRCC the ability to ensure the recycling, reuse, treatment and proper disposal of used oil and used oil filters.

The Permits Administrative Review Section is responsible for carrying out the administrative review of permits entering the agency, including air, water and waste permits.

d. Water Permits & Resource Management Division

The Deputy Director of the Water Permits & Resource Management Division oversees five Sections: Public Drinking Water, Utilities & Districts, Waste Water Permitting, Water Quality Assessments, and Water Rights Permitting & Availability.

The Public Drinking Water Section administers state statutory requirements, agency rules and standards, and the primacy requirements of the federal Safe Drinking Water Act to assure that the approximately 6700 public water systems in Texas provide safe water to their customers. The 6700 systems serve approximately 97% of the state population. This program is accomplished through the review and approval of plans and specifications for construction, continuous monitoring for compliance with drinking water standards, implementation of the Source Water Assessment and Protection Program, and technical support to public water systems.

The Utilities and Districts Section is responsible for the regulation of rates and services of approximately 750 investor owned utilities and has appellate rate review authority over approximately 1300 water districts, 850 water supply corporations and municipalities serving outside their corporate limits. In addition, the section has general oversight over the water districts and investor owned utilities. As part of this oversight, the section reviews the creation of new districts; regulates utility service areas; reviews engineering plans for public water systems; reviews bonds for water districts; assesses financial, managerial and technical capabilities of utilities and provides consumer assistance.

The Wastewater Permitting Section implements the Texas Pollutant Discharge Elimination System (TPDES) Program to issue and administer permits for industrial and domestic wastewater treatment; agriculture operations, including concentrated animal feeding operations (CAFOs); stormwater runoff; and other wastewater treatment facilities. The Section also processes state-only no-discharge wastewater permits. About 4000 permits exist and about 750-1000 applications for new permits, amendments, and renewals are processed each year. In addition, the Section regulates the use, transport, and disposal of sludge from water and wastewater treatment facilities through registration and permitting activities. The Section also issues authorization for the reuse of reclaimed water from both municipal and industrial sources, administers the federal pretreatment program through the TPDES program, and reviews the plans and specifications for domestic wastewater treatment systems.

The Water Quality Assessment Section primarily reviews state and federal TPDES permits for regulatory technical requirements. The Section also certifies U.S. Corps of Engineer 404 permits that authorize dredge and fill projects to ensure that such projects will protect the water quality of streams, rivers, lakes, and coastal water bodies.

The TNRCC regulates the use of surface water, primarily through the issuance of and amendments to surface water right permits in the Water Rights Permitting & Availability Section. There are about 6500 water right permits in the State. About 400 applications, ownership changes, and contracts need to be processed annually. Of these, about 300 are water right applications. The Section conducts hydrologic and environmental analysis of water right applications and interstate deliveries of water (supporting the Interstate Compact Commissions) to quantify water available for water rights, instream uses, and bays and estuaries. The staff evaluates water conservation plans and drought contingency plans required by statute. In addition, the TNRCC issues permits and licenses for weather modification projects and administers a grant program to assist in funding rain enhancement programs.

e. **Air Permits Division**

The Air Permits Division was created on September 1, 1999. Prior to this, air permitting was accomplished at the TNRCC within the Office of Air Quality in two separate divisions: Operating Permits Division and New Source Review Permits Division. The Operating Permits Division processed all federal operating permits (Title V), acid rain permits (Title IV), and Title III control technology activities. The New Source Review Permits Division processed all new facility air permits and exemptions, conducted air dispersion computer modeling and developed policy and practices for emission credit banking and trading.

After reorganization of the agency, the mission, functions, and resources of the two divisions were merged into one division (Air Permits). The merger reorganized the functions into the following five sections that blend the technical and administrative functions from the two previous divisions to provide for more efficient and coordinated air permitting and support functions.

The Administrative Program Support Section performs all division related administrative functions that previously had been dispersed throughout the two divisions. Included in this section are the budget, contracting, document processing, human resource, timekeeping, procurement and related administrative support functions.

The Technical Program Support Section performs all technical support functions to facilitate issuance of air permits. All database management, rule interpretation, control technology analysis and implementation, modeling, emission banking and trading, forms development, and cross program commonality issues are accomplished in this section.

All Title IV and Title V Federal Operating permits will be reviewed and issued within the Operating Permits Section. The Operating Permits Section fulfills the requirements of Title V of the Federal Clean Air Act (FCAA) and Title 40, Code of Federal Regulations Part 70 (40 CFR 70) which require states to establish a state Operating Permit Program. Chapter 382, Subchapter C of the Texas Health and Safety Code authorizes the TNRCC to develop rules to implement the operating permit program required by 40 CFR, Part 70. The U.S. Environmental Protection Agency (EPA) granted interim approval of the Texas Operating Permit Program effective July 25, 1996.

The Operating Permits Section is responsible for the review of operating permit applications, which identify applicable requirements of all major sources of regulated air pollutants and the implementation plans of the new federal hazardous air pollutants requirements. The Section develops and implements the permitting aspects of Title III (Air Toxics), Title IV (Acid Rain), and Title V (Operating Permits) of the Federal Clean Air Act Amendments of 1990.

Title V of the Federal Clean Air Act imposed a shift in the regulatory approach to environmental compliance with air regulations by requiring an operating permit which codifies applicable federal requirements and places clearer responsibility on the regulated community to report compliance status for those requirements. The operating permit comes with the obligations for responsible official certification of all representations and data, six month reporting of environmental data, annual compliance certification, additional emission monitoring and provides an enforcement tool for the agency. The mission of the Operating Permits Section is ongoing.

All sites that have major amounts of air emissions are required to obtain an operating permit. Some sites with minor amounts of emissions that are subject to certain regulations are also required to obtain operating permits because EPA specifically identified that those sites must be permitted. Approximately 1800 to 2000 sites will be required to obtain a permit. The program serves the general public by clarifying obligations of regulated entities.

The TNRCC is required by the FCAA and the operating permit program approval, to review and issue permit applications over a five year period beginning July of 1996. A permit review schedule by Standard Industrial Classification Codes has been established. The permit review process includes time lines for public notice, an EPA objection period, and a citizen petition period. The program is being implemented as a partnership between the Air Permits Division and the Field Operations Division through integration of field inspections into the permit review process.

The Mechanical/Combustion New Source Review Permits Section is responsible for reviewing and issuing all new source mechanical and combustion related permits. As well, exemption registrations will be completed in this section.

The Chemical/Coatings New Source Review Permits Section has the responsibility for reviewing and issuing all new source chemical and coatings related permits. As well, exemption registrations will be completed in this section.

The Mechanical and Combustion New Source Review Permits Section and the Chemical and Coatings New Source Review Permits Section exist to satisfy Section 110 of the Federal Clean Air Act (FCAA) which requires each state to have, in its State Implementation Plan (SIP), regulations governing the modification and construction of any stationary source that affects attainment with national ambient air quality standards (NAAQS).

The key function of the two New Source Review Permits Sections is to minimize air pollution from new or modified facilities and to ensure protection of public health. The sections process preconstruction permit applications and exemption registrations for new and modified air emissions sources including preconstruction reviews for "major" sources as required under Title I and Title III of the Federal Clean Air Act. They also perform air emission reviews in support of solid and hazardous waste permitting including the Resource Conservation and Recovery Act (RCRA) Combustion Strategy.

The New Source Review Sections serve the regulated community by conducting an analysis, including the determination of the appropriate emission controls, prior to the construction or modification of any facility that may emit air contaminants. Potentially, any new or modified facility that emits air contaminants may be regulated and can range from an oil refinery or chemical plant to a dry cleaning facility or grain elevator. They also serve the general public by conducting an air quality analysis of the proposed emissions from those new or modified facilities to ensure public health and welfare. The New Source Review sections have processed over 50,000 preconstruction authorizations as of fiscal year 1999 with thousands more authorized through exemptions from permitting for which no registration is required. Qualification or eligibility requirements for receiving services is the application/registration to the agency.

2. Office of Compliance & Enforcement

The Deputy Director of the Office of Compliance & Enforcement (OCE) oversees the Field Operations, Enforcement, Compliance Support, and the Monitoring Operations Divisions. The OCE oversees agency compliance monitoring and enforcement activities and the operations of 16 regional offices across the state. OCE was established in September 1995 with the recommendation that enforcement activities of the agency be organized in a functional structure to maximize efficient use of resources and to provide consistency to enforcement. The Monitoring Operations Division was later transferred to OCE.

a. Field Operations Division

Compliance monitoring is the primary function of the Field Operations Division. The division monitors surface and ground water quality, hazardous and solid waste, air quality, petroleum storage tanks, and water rights. On March 1, 1992, the division assumed the monitoring duties of the Texas Department of Health related to municipal solid waste and public drinking water supplies.

The Field Operations Division consists of 16 regional offices located throughout the state, and a central office located in Austin. Major regional office responsibilities include:

- Conducting site visits at facilities/operations across the state to determine compliance with applicable air, water, and waste rules and regulations.
- Investigating complaints at permitted and non-permitted facilities/operations based on citizen requests for assistance.
- Developing enforcement actions for most types of air, water, and waste violations identified during inspections and/or complaint investigations.
- Ambient monitoring for local and statewide air quality, drinking water monitoring for the protection of the public water supplies in communities across the state, and surface water monitoring to ensure the continued quality of streams, lakes, rivers, and other water bodies located throughout the state.
- Overseeing and ensuring compliance with water rights and, when drought conditions exist, allocating the limited water resources in certain areas of the state.
- Approving pollution abatement plans to ensure protection of the underground water supplies (aquifers) in certain areas of the state.
- Responding to emergency spills statewide in a timely manner.
- Providing education and technical assistance to the community as needed.

Generally, the regional offices perform monitoring activities for the agency. Inspectors in the agency's regional offices conduct inspections of municipal and industrial wastewater treatment facilities on a routine basis to evaluate the facilities' compliance status. In addition, streams, reservoirs, and estuaries are monitored for compliance with state water quality standards. Inspectors conduct inspections of leak detection, spill/overflow, and corrosion protection equipment associated with underground storage tanks. Water utility districts in the process of creation are inspected, along with their progress in constructing wastewater treatment facilities. Every public or private system providing drinking water requires monitoring to assure safe water supplies.

Monitoring non-hazardous waste, including municipal landfills, special wastes, discarded automobile tires, waste oil and filters, septic tank pumping, medical waste, and incinerator ash, is a responsibility of the inspectors. Regional staff also inspect facilities that generate, store, process, or dispose of industrial solid waste or hazardous waste to determine if these activities are conducted in accordance with the Texas Solid Waste Disposal Act and the Texas Water Code. In addition to routine Compliance Evaluation Inspections, inspections may be conducted at any time to obtain additional information in support of potential enforcement actions. Monitoring and enforcement activities deal not only with facility standards, but also include preparedness for and prevention of fires, explosions, or uncontrolled releases of hazardous waste; contingency plans and emergency procedures; shipping, record keeping and reporting requirements; and ground water monitoring.

When appropriate, special investigations are performed. These special investigations focus on coordinating with state and federal agencies to identify violations of criminal codes. Concurrent with special investigations, an increase in multi-media monitoring and enforcement provides a more complete determination of a facilities' compliance with all relevant environmental rules and regulations.

Field Operations (FO) personnel provide 24-hour, 7 days a week response to spill events. Field investigators make an on-scene response to many chemical and waste spills, and at any major situation where potential exists for environmental harm. Field Operations personnel also provide assistance to the Department of Emergency Management (DEM) during natural disasters (floods, hurricanes), including on-scene response to spills and coordination of cleanup activities.

The Commission depends upon quality chemical and physical data, and quality inspection plans in its decision making. The Compliance Support Division staff provide quality assurance by operating an analytical laboratory inspection program. Staff monitor the quality of chemical data and review all inspection plans prior to implementation.

Except for matters regarding water utility rates, the FO Division also investigates all complaints, certain requests for assistance from the public, and reports of violations received by the agency.

b. Enforcement Division

When necessary, enforcement actions may be initiated to bring about compliance. The Enforcement Division is responsible for development of the standard operating procedures and policies used by agency staff regarding the enforcement process. The development of these procedures and policies ensures that violations are consistently handled across the state. Any person violating the Texas Water Code, the Texas Health and Safety Code, any condition of a permit or other authorization, or any rule, regulation, or order of the Commission is subject to enforcement action. The responsibility for initiating and pursuing formal enforcement actions is coordinated between several areas of the agency.

TNRCC enforcement functions are conducted by the Enforcement Division, the regional offices, and the Litigation Division. Most violations discovered during inspections are quickly corrected in response to notices of violations (NOVs). However, if serious and/or continuing violations are identified during an inspection, the regional office will initiate enforcement action. Staff develops an administrative enforcement case potentially resulting in an administrative order with penalties. Cases may be referred to the Office of the Attorney General for enforcement through the courts, including potential civil penalties. Enforcement may also be initiated after record reviews indicate serious and/or continuing violations. Where possible, the TNRCC encourages expeditious settlement of enforcement actions by extending a settlement offer. If settlement does not occur within a short time, the Litigation Division will

start the process that can lead to an administrative hearing. The Commission has ultimate approval of all administrative enforcement orders.

The response used to correct permit and/or rule violations is based upon the degree of violation, the environmental and health hazard, and the steps being taken by the permittee to become compliant. In most cases, the Commission's regional staff (FO Division) will attempt to work with the facility to attain compliance either through informal action or through issuance of NOV letters. Listed below in progressive order from less to more serious violations are responses the divisions use to obtain compliance. This list is in no way meant to be inclusive or exclusive.

1. Correspondence -Formally notify the facility of its noncompliance and request implementation of a program for becoming compliant. Correspondence will frequently suffice to correct minor violations. Confirmation of correction is generally documented by performing a Record Review Inspection (NRR) which resolves the violation(s) based on correspondence received from the facility. A site visit could be performed during the NRR inspection process.
2. Conferences/Discussion -Held during inspections to discuss the reasons for noncompliance and to establish an acceptable compliance schedule for becoming compliant. When dealing with complex situations and/or more flagrant violations, staff conferences are frequently required to fully develop all aspects of the problem and to develop acceptable corrective programs. This can occur at the regional or central office level.
3. Enforcement Action -Action is in accordance with Enforcement, and FO Divisions enforcement procedures. Usually, Regional personnel will work with the facility to attain compliance at the regional level through either informal action or the issuance of "Notice of Violation" letters. Response by the facility which is sufficient to address the inspectors' concerns results in the violation(s) being "resolved out," usually by a record review inspection. If the facility is recalcitrant and an existing or potential serious environmental threat exists, enforcement action is initiated. Enforcement action may result in an administrative order or court order. "Formal enforcement" action can also include investigation and/or enforcement by newly-formed task groups and networks for criminal enforcement.

Formal enforcement proceedings, initiated by the program staff for major violations (or minor violations if violator response to earlier enforcement action is unsatisfactory) include the following options:

1. Issuance of a NOV letter detailing recommendations for corrective actions;
2. Issuance of a petition (usually leading to an Agreed Order) which specifies a corrective action schedule the violator must follow and may contain proposed administrative penalties.
3. Enforcement proceedings before the Commission which may result in amendment, revocation, or suspension of a permit or authorization by rule; and
4. Non-administrative legal actions (in courts at law) seeking injunctive relief, civil, or criminal penalties.

Under §7.052 of the Texas Water Code, the State may seek administrative penalties of up to \$10,000 a day for each violation. Under §7.102 of the Texas Water Code, the Attorney General may represent the State in civil judicial actions which may seek penalties from \$50 to \$25,000 for each day of each violation. State prosecutors may bring actions for criminal penalties under §7.162-7.163 of the Texas Water Code.

Monitoring of a compliance schedule is carried out from the central office and regional offices through correspondence and/or inspections. Compliance schedules are maintained on a computer and printouts are reviewed regularly to determine the operator's conformance to his schedule. The printout lists schedules and deadlines derived from Commission or court orders. Failure to meet a compliance schedule is considered a violation of the Texas Water Code, Texas Health & Safety Code and/or TNRCC rules; and is handled in a manner commensurate with the severity of the violation and/or criminal intent.

The Superfund Assessment Section identifies sites that may qualify as State Superfund sites, assesses and prioritizes eligible sites for continued evaluation, and identifies potentially responsible parties for eligible sites. Staff determines which of the eligible sites are causing irreversible or irreparable harm to the public and require an immediate removal action. The section seeks voluntary, immediate removal action when required, and site cleanup from the identified potentially responsible parties prior to the proposal of the site as a state Superfund site. Staff prepares Hazard Ranking Packages which determine the related need of cleanup at each site. This section also participates in the EPA Cooperative Agreement to administer and provide oversight of EPA/Site Screening Inspections.

c. Compliance Support Division

The Compliance Support Division supports the major program areas of TNRCC by assisting the regulated community in achieving voluntary compliance. This division provides educational outreach and technical assistance to the regulated community including local governments. The division issues occupational licenses, certifications, and registrations for environmental occupations; such as, water and wastewater operators and underground storage tank and landscape irrigation installers. There are currently more than 40,000 occupational certification licenses. The division provides training and instructor approval, examination development and administration, record keeping, and complaint investigation. The division also manages the agency's quality assurance and laboratory inspection programs.

The division assures the competency of licensed environmental professionals which involves establishing licensing criteria, developing and administering examinations, approving training courses and providers and pursuing enforcement action against licensees when necessary.

As part of this Division the Installer Certification Section manages the certification of: on-site sewage facility (OSSF) installers, designated representatives, and apprentices; leaking petroleum storage tank corrective action specialists and project managers; underground storage tank installer on-site supervisor and registered contractors; stage II vapor recovery training providers; and landscape irrigators and installers. The section also administers the OSSF and landscape irrigation regulatory programs.

The Operator Certification Section oversees the certification of the Water Operator & Operations Companies, Waste Water Operators & Operations Companies, Customer Service Inspectors, Back Flow Prevention Assembly Testers, Residential Water Treatment Facility Operators, Municipal Solid Waste Technicians, and the Visible Emissions Evaluators.

This Division also coordinates the agency's quality assurance program.

d. Monitoring Operations Division

The Monitoring Operations Division is responsible for monitoring air and water quality within the State of Texas and for reporting that information to the public. Division staff work together to examine and interpret the causes, nature, and behavior of air and water pollution in Texas. The division also provides laboratory analytical services for air, water, and waste samples.

The Monitoring Operations Division conducts strategic planning of air monitoring resources to ensure network integrity and maximum utilization of resources. The division also evaluates and implements state of the art, science technology to position Texas as a national leader in air quality monitoring.

The TNRCC operates more than 200 air monitoring stations throughout the state. The Ambient Monitoring Section within the division deploys the stations and supports the TNRCC regional offices' operation of these sites by providing corrective and preventative maintenance and engineering and supply services. Monitoring sites contain specialized instruments to measure a variety of air pollutants such as ozone, sulfur dioxide, nitrogen oxides, carbon monoxide, lead, and respirable particulate matter in accordance with federal air monitoring requirements. Meteorological conditions and volatile organic compounds, or air toxins, also are monitored at numerous sites. In addition, aircraft monitoring is conducted to provide an essential complement to the ground-based network. This monitoring allows for vertical profiling to determine the depth and extent of pollutants in the atmosphere.

The Monitoring Data Management and Analysis Section of the division validates and manages air and water quality and meteorological data collected by the TNRCC and data collected by private and local monitoring networks. Validated air quality data are electronically transferred to the EPA air quality data base (AIRS) within 90 days after the end of each monitoring quarter, as federally required. Validated water quality data are electronically transferred to the TNRCC Texas Regulatory and Compliance System (TRACS) Data Base on a semi-annual basis and are also reported to the EPA Oracle-based data management system, STORET. The section also supports community anti-pollution efforts by conducting ozone pollution forecasting for several metropolitan areas of the state.

The Laboratory & Mobile Monitoring Section of the division also conducts specialized air monitoring needed on a short-term basis. Staff performs soil sampling for heavy metals, property line (ground level) sampling for airborne particulate matter and toxic compounds, and mobile sampling for a number of gaseous organic and inorganic pollutants to characterize human exposure in populated industrialized areas. The air laboratories perform organic and inorganic analysis of air samples collected from the TNRCC's air monitoring networks as well as samples collected by or referred to the TNRCC and local air pollution control program investigators. Laboratory staff use an array of sophisticated analytical techniques and instruments to identify air pollutants and determine their concentrations in samples.

This section also includes a surface water quality monitoring program which provides for an integrated evaluation of physical, chemical, and biological characteristics of aquatic systems in relation to human health concerns, ecological conditions, and designated uses. The program encompasses the full range of activities required to obtain, manage, store, share, assess, and report water quality information to other TNRCC staff, agency management, other institutions, local governments, and the public. Staff members cooperate with Clean Rivers Program contractors, river authorities, and local entities to collect water, sediment, and biological samples at scheduled sites on streams, reservoirs, and estuaries. They conduct intensive surveys of water bodies to accurately characterize the degree and extent of use impairments and support the development of pollution load allocations. Water quality assessments (305(b) Water Quality

Inventory) and a list of impaired water bodies requiring restoration (303(d) List) are prepared for all major water bodies to support agency regulatory actions, such as permits for wastewater control and drinking water treatment. They also maintain a biological laboratory in Austin for the preservation of samples and the examination and identification of organisms.

The Houston Laboratory provides continuous chemical, biological, bacteriological, and physical testing of water, wastewater, soil, sediment, sludge, and tissue samples in support of various monitoring and enforcement activities of the agency. The Houston Laboratory receives between 4,500 and 5,500 samples per year which represent approximately 50,000 individual analyses per year. The Houston Laboratory also provides analytical support to air monitoring activities on a special project basis, and smaller short-term projects, involving various media, are also undertaken through the year.

3. Office of Legal Services

The mission of the **Office of Legal Services** is to provide legal counsel and support to the Executive Director, the agency's program areas, and to the commissioners. The Office of Legal Services ensures that commission decisions follow the law and that agency rules comply with statutory authority. There are three areas that comprise the Division: (1) General Law Division, (2) Environmental Law Division, and (3) the Litigation Division.

a. General Law Division

The functions of the General Law division include: personnel and employment law, ethics, and TNRCC operating policy matters, contracts, public information/open records, rules review, administrative records for appeals under the Administrative Procedures Act, record retention policies, information management issues for the Office of Legal Services, and administrative support to Office of Legal Services.

b. Environmental Law Division

The Environmental Law Division is divided into the following major areas: water quality, hazardous and industrial solid waste, municipal solid waste, water rights, water utilities, and air quality. In cooperation with the Waste Policy & Regulations Division, the Environmental Law Division assists in the preparation of the agency's applications for delegation of the RCRA program and in drafting any necessary rule changes. The Environmental Law Division functions to provide support for rulemaking, legal issues of federal program delegation, support for litigation in state and federal courts, interpretation of environmental statutes and rules, as well as assistance in permitting and contested permit cases, and the overall regulation reform effort.

c. Litigation Division

The **Litigation Division** provides legal support to the enforcement program staff and directs a criminal enforcement unit. In particular, the division provides legal representation and counseling in policy matters, hazardous and industrial waste enforcement activities, and in multi-media enforcement activities. The functions of the division include enforcement actions coordinated with the Enforcement Division in the Office of Compliance and Enforcement, litigation liaison for enforcement actions litigated by the Office of the Attorney General, delinquent fee and penalty actions coordinated with the Financial Administration Division in the Office of Administrative Services, contested administrative enforcement actions, assistance in criminal enforcement matters, as well as supplemental environmental projects and environmental audits coordination. The division also provides legal assistance to the Texas Irrigators Advisory Council.

4. Office of Administrative Services

The Deputy Director of Administrative Services oversees the Chief Financial Officer and Five additional Divisions: (a) Information Resources, (b) Human Resources and Staff Development, (c) Budget and Planning, (d) Financial Administration, and (e) Support Services.

a. Chief Financial Officer Division

The Chief Financial Officer Division is divided into three main sections. The Chief Financial Officer Section plans, coordinates, and oversees the agency's financial operations including strategic planning, appropriations, budget development and monitoring, financial administration, compliance evaluation audits and revenue estimating. The Chief Financial Officer Section develops and maintains revenue estimates and a comprehensive funding model for budget and appropriation process and provides leadership in financial system development through coordination, planning and project management.

The Strategic Planning and Appropriations Section prepares the biennial Legislative Appropriations Request and prepares fiscal impact and public benefit analysis of all proposed agency rules. The Section also coordinates the development & preparation of the agency's quarterly performance report. As well, the Section coordinates the development & preparation of the agency's Performance Partnership Grant with EPA, conducts federal grant procurement, reviews and edits grant work plans, leads certain negotiations with the federal government, prepares grant applications, monitors program performance, and conducts grant management training.

The Compliance, Evaluation and Audit Section performs audits of contracts, grants, and fees.

b. Information Resources Division

The Information Resources (IR) Division consists of five main sections. The Administration Section plans, coordinates, controls and manages the support for TNRCC's information technology (IT). This Section coordinates the preparation of the Information Resources Strategic Plan and the Biennial Operating Plan; serves as a clearinghouse for dispersal of agency database information to the public and other agencies; negotiates with vendors in acquiring technology services; prepares plans for IT-related disaster recovery, contingency planning and security; manages agency's software licensing; and manages the division's IT-related contracts and negotiations.

The Customer Service Center Section provides front-line services provided to customers, both internal and external to the agency. Services include dispatching computer related service calls to other areas within IR, administering the agency's records management and open records functions, monitoring the agency computer systems, satisfying requests for digital data and reports, and performing security administration and configuration management.

The Infrastructure Management Section supports computers, networks, system software, and enterprise-level applications throughout the agency. Support functions include standardizing the servers and desktop computers; identifying and addressing server problems; facilitating the installation and migration to new servers; upgrading software; developing and documenting standards, processes, and procedures; and providing both local and area-wide network support to central and field office customers.

The Software Development and Maintenance Section provides support for IT development projects, develops and maintains enterprise information systems, assists IR customers in planning and executing information transaction systems (especially Web-based systems), coordinates agency information transaction plans with other state agencies, integrates GIS technology to enhance the capabilities of agency information systems, and assists with development to migrate agency data access functions to more customer friendly systems (such as Web browser-based systems).

The Project Management Section supports agency projects prioritized by the Information Technology Steering Committee. The teams in this section provide the most interaction with external customers on large-scale application development projects, focusing on the planning and execution of IR deliverables, while advising customers of appropriate standards and processes. Customers are assigned project managers who provide ongoing support for their projects, and act as liaisons with the customers and the other areas within the Project Management Section and IR Division. Section staff lead customers through the processes for database administration, quality assurance, technical planning, security, disaster recovery planning, etc.

c. Human Resources & Staff Development Division

Four sections comprise the Human Resources and Staff Development (HRSD) Division. The Administrative Section supervises HRSD programs and activities, including strategic planning, organizing, coordinating, directing, reporting, budgeting, policy development/interpretation, and achievement of established goals and objectives consistent with agency policies, state and federal employment laws. The Section provides consultation and counseling to employees and supervisors regarding the application of policies and procedures relating to employment issues such as conflict, discipline, and/or performance appraisals.

The Recruitment, Staffing, and Classification Section ensures compliance with the Position Classification Act of 1961, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act, and the Equal Pay Act by interpreting and applying these regulations. Staff in this section participate in the development and maintenance of the agency's Career Ladder Initiative by providing consultation to management and career ladder teams. This section of the agency ensures compliance with state and federal employment laws, as well as with agency policies and procedures; screens applications for minimum qualifications and related education and experience; provides technical assistance and guidance to management regarding the hiring process; administers the recruitment plan for the agency which includes scheduling, coordinating, and participating in a variety of recruitment activities which will result in attracting a diverse pool of qualified applicants for vacant positions.

The Compensation and Benefits Section provides support by auditing and data entry of personnel actions and other employee changes into the Uniform State Personnel/Payroll System (USPS) and Human Resources Information System. The Section also provides benefits support and administers the following employee programs: TNRCC Wellness Program, TNRCC Employee Recognition and Tenure Programs, and State Employee Charitable Contribution Campaign.

The Training Section designs, develops, delivers, and contracts for job-related training in the technical, computer, management and general skills areas. In addition, the section coordinates satellite training and conducts training needs assessments, and oversees several training and development activities including career ladder training support.

d. **Budget and Planning Division**

The Budget and Planning Division establishes, manages, and monitors the agency's annual operating budget. The Division assists in the preparation the agency's Legislative Appropriation Request, and responds to requests for financial information from the agency's and State's leadership.

e. **Financial Administration Division**

There are six sections that provide the financial administration for the agency. The Administration Section directs the collection of revenue, payment of employees and vendors, procurement of goods and services, and financial assurance management for the agency. The Section ensures the integrity of the agency's financial records and coordinates functions and activities related to the implementation of the Historically Underutilized Business (HUB) and Minority-owned, Women-owned Business Enterprise (MWBE) rules.

The Disbursements Section processes and distributes payroll, travel and employee reimbursements, and payments to vendors. The Revenues Section collects revenues for the agency, including billing of fees and grants; processes cash receipts and draws on and ensures deposit of funds.

The Financial Reporting Section prepares and distributes internal and external financial reports, updates and maintains the agency's financial system tables and security; monitors and manages the agency's appropriation and fund cash balances to ensure payments to vendors and employees process; prepares cost summaries and provides documents for superfund, emergency response programs, and EPA; calculates voluntary cleanup and innocent landowner program billings; processes journal vouchers and verifies State Employee Incentive Program savings; processes manual labor distribution; and ensures accuracy of the agency's general ledger account including reconciliation with the property system.

The Procurement and Contracts Section procures goods and services for the agency; ensures that procurement and contracts are made in accordance with statute, General Services Commission, Comptroller, and Governor's Office rules; works with GSC on open market requisitions; publishes invitations to bid and requests for proposal, offers, and Qualified Information Services Vendor types of purchases; provides assistance to programs for procurement requirements; coordinates the development of all TNRCC service contracts (including outgoing professional services, consultants, assistance grant contracts); assists programs in the preparation of appropriate scopes of works and contractual payment procedures; ensures consistency and adherence to the standards in both contract procurement and final contracting documents; tracks agency-wide contract-development and contract-management activities; and ensures that contract-monitoring functions are being carried out by TNRCC programs.

The Financial Assurance Section ensures that risk to the agency's and state's assets are minimized through review and management of the financial assurance requirements for waste programs. The Financial Assurance Section determines financial stability of entities seeking permits; determines financial capability of entities in enforcement; and reviews contracts or insurance and liability coverage.

f. **Support Services Division**

The Support Services Division contains four primary sections. The Administrative Section plans, directs, and administers all activities of the Support Services Division in compliance with the agency's mission.

The Staff Services Section provides cost effective and efficient service in the areas of facilities management, office relocations, space planning and allocation, contracting for general and maintenance services, stocking supplies and equipment, and the management of all agency leases and inventoried agency property. The section receives, processes, and distributes agency mail, providing specialized courier service for the Park 35 employees, and provides general management and problem support of agency vehicle fleet.

The Telecommunications Section provides and maintains local telephone services and equipment for the agency's central office; provides all agency long distance services; provides, installs, and maintains telephone and data communications wiring for the agency central office complex; and assists and advises agency field offices in the acquisition, installation and maintenance of telephone services, equipment, and wiring. The Section also performs large volume copying; services and maintains office copiers; and coordinates reprographics requests from Agency Communications and from the public.

The Risk management, Security, and Safety Section addresses agency risk management, safety & health, workers' compensation claims, physical security and American Disability Act programs.

5. Office of Environmental Policy, Analysis & Assessment

The Office of Environmental Policy, Analysis & Assessment was created in March of 1999, in accordance with recommendations following the Business Process review.¹² As with the former Office of Policy & Regulatory Development, the office still consolidates oversight of the Commission's policy and rulemaking functions to provide greater consistency across program areas. However, because natural resource conservation and public health protection is being considered in a holistic fashion, the office now explores multi-media approaches to policy development. The office is divided into three divisions. The Policy and Regulations Division coordinates all agency policy development and rulemaking. The Technical Analysis Division develops and updates the emissions inventory for all stationary, mobile and area sources of contaminants, and evaluates the impacts of transportation projects on air quality. The division also provides computer modeling in support of pollution control strategies, and designs and implements mobile source pollution reduction programs. Finally, the Strategic Environmental Analysis & Assessment Division researches and prioritizes regional and statewide environmental issues for developing strategies for improving and protecting the state's environment.

¹²

See footnote 11, *Supra*.

V. PUBLIC NOTICE, HEARING, AND APPEAL PROCESSES ¹³

State law provides authority to implement the following requirements, to:

- a. Notify the public, affected states, and appropriate governmental agencies of proposed actions concerning the issuance of permits;
- b. Transmit such documents and data to and from the U.S. EPA and to other appropriate governmental agencies as may be necessary;
- c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits; and
- d. Provide an opportunity for judicial review in state court of the final approval or denial of permits.

See generally Tex. Gov't Code Ann. Chapters 551, 552, 2001 (Vernon Pamph. 1998); Tex. Water Code Ann. §§5.103, 5.105, 5.115, 5.175, 5.351, 26.011, 27.018 (Vernon 1988 & Supp. 1998; 30 TAC Chapters 10, 39, 50, 55, 80, 281; and House Bill 801, 76th Legislature, 1999.

The RCRA program provides for public participation throughout the permitting process. Federal requirements regarding public notice of permit actions, public comments, requests for public hearings, requests for public meetings, and procedures related to receipt of, consideration of, and response to public comment are set forth in 40 C.F.R. §§124.10-124.12 and 124.17. The requirements of 40 C.F.R. §124.10 applicable to state programs are reflected in provisions including 30 TAC Chapters 39, 50, 55, 80, and 305.

Permit applications are made available to the public. Once a permit application is complete and the draft permit is prepared by the Executive Director, copies of the draft permit are also made available to the public. Commission records are open to the public for review subject to statutory privileges and claims of confidentiality. Tex. Gov't Code Ann. Chapter 552.

Notices of the application and of the draft permit are published in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is to be located. Notices are also mailed to individual persons, governmental bodies, and anyone else who requests to be included on the mailing list. 30 TAC §§39.13, 39.251(d). Notices include the information that is required by 40 C.F.R. §124.10(d). 30 TAC §39.11. The applicant is responsible for public notice by newspaper and local radio broadcast. 30 TAC §39.5(h). For notice of permit applications, a public comment period of at least 45 days is provided for hazardous waste facilities. 30 TAC §39.103.

¹³ See also Section VI, *Infra* this Cluster VI Program Description. In the 76th Legislative Session, House Bill 801 was enacted thereby affecting State law governing the public notice and hearing processes. Applications declared administratively complete prior to September 1, 1999 will continue to be processed under the existing rules. Applications declared administratively complete on or after September 1, 1999 will be processed under the new rules.

The Commission's rules require that public comment on permitting decisions be considered and responded to by the person or body making the permitting decision. 30 TAC §55.25(b).¹⁴ Before an application may be approved, the Executive Director will prepare a response to all significant public comments on the draft permit that are raised during the public comment period and make the responses available to the public. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes. If the application is acted on by the Commission under 30 TAC §§50.13 or 55.27(a)(1) — that is, without a trial-type contested case hearing — the Executive Director's response to public comment shall be made available to the public and filed with the chief clerk at least ten days before the Commission acts on the application. The Commission shall consider all public comment in making its decision and shall either adopt the Executive Director's response to public comment or prepare its own response. Pursuant to 30 TAC §55.25, a public meeting will be held when there is a significant degree of public interest in a permit application or whenever required by law. The public comment period is automatically extended to the close of any public meeting. At least 30 days notice of the meeting shall be given in the manner required under 30 TAC Chapter 39. A tape recording or written transcript of the public meeting must be made available to the public. 30 TAC §55.25(b)(2).

Texas law also provides for trial-type, contested case hearings on applications for RCRA permits in some circumstances. If a contested case hearing is requested, the Commission will evaluate whether the request meets the substantive requirements for granting of the request. If a contested case hearing is held, the public meeting referred to in the paragraph preceding this one shall be conducted as a part of the preliminary hearing under 30 TAC §80.105, unless the Executive Director specifies a different time and place for the public meeting. 30 TAC §55.25(b)(2). All public comment on the application received during the comment period and copies of the Executive Director's responses shall be admitted into the evidentiary record of the contested case hearing, and the parties are allowed to respond to and present evidence on each issue raised in a comment or response. 30 TAC §80.127(f).

Pursuant to legislation enacted in 1995, the Commission's contested case hearings are presided over by an administrative law judge (ALJ) employed by the State Office of Administrative Hearings, a separate state agency. At the completion of a hearing, the ALJ presiding over the contested case hearing closes the record. He or she then prepares a proposal for decision (PFD), which, if it is adverse to any party, must include a statement of the reasons for the proposal and proposed changes to the draft permit recommended by the ALJ in response to public comment. 30 TAC §80.251. If the Commission issues the proposed permit with changes, it may adopt the ALJ's reasons for the proposed changes in response to public comment, or substitute its own reasons.

Judicial review of RCRA permits is available, as follows. If a contested case hearing was held, a party is entitled to judicial review under the authority and procedures of the Texas Administrative Procedure Act (APA), Tex. Gov't Code Ann. §2001.001 *et seq.* (Vernon Pamph. 1998). If a contested case hearing is not held, a person affected by a final ruling, order, or decision of the Commission may file a petition for judicial review under Tex. Water Code Ann. §5.351 within 30 days after the decision is final and appealable. A person seeking judicial review, whether under the APA or Tex. Water Code Ann. §5.351, must have exhausted available administrative remedies, including by complying with Commission rules regarding motions for rehearing or reconsideration, *see, e.g.*, 30 TAC §§50.19, 50.39, 55.27(g), and

¹⁴ The part of the public comment system embodied in 30 TAC §§55.25(b), 80.127(f), and 80.251(b) was lawfully adopted by the Commission on November 5, 1997, pursuant to statutory authority in Tex. Water Code Ann. §§5.103, 5.105, and 26.011, among other provisions.

80.271. Requesting or participating in a contested case hearing is not among the exhaustive requirements for judicial review of permit actions under Tex. Water Code Ann. §5.351.

A person who failed to file timely public comment, file a timely hearing request, participate in a public meeting held under the rules, and participate in any contested case hearing held under TAC Chapter 80 may file a motion for rehearing as provided for in 30 TAC §§50.19, 55.27(g), or 80.271, or a motion for reconsideration under 30 TAC §50.39, so long as the motion addresses only the changes from the draft permit to the final permit decision, and thus may exhaust administrative remedies for purposes of seeking judicial review regarding those changes. 30 TAC §55.25(b)(3).

A finding by an ALJ or the Commission concerning a person's status as an affected person would not bind a Texas district judge in considering that same person's standing to seek judicial review, under Tex. Water Code Ann. §5.351, of the Commission's action on a RCRA permit application. Although the Texas Supreme Court has not expressly adopted the federal standard for individual standing, numerous cases from lower courts of appeal indicate that the two standards are very similar. The "affected person" standard set out in Tex. Water Code Ann. §5.115(a) and 30 TAC §55.29 comes into play only in a decision on entitlement to a contested case hearing, whereas the availability of Tex. Water Code Ann. §5.351 in the RCRA permit context, as noted above, does not depend on a contested case hearing having been requested or on a person having participated in such a hearing. The Office of the Attorney General agrees that it will not rely on or refer to the conclusion of an ALJ or the Commission that a person is not an affected person as a basis to oppose participation by that person in subsequent judicial proceedings brought under Tex. Water Code Ann. §5.351. The Office of the Attorney General may, however, rely on the facts underlying the conclusion in opposing a person's standing in court. Also, when an ALJ or Commission conclusion about affected person status is challenged in the judicial proceeding, the Attorney General may defend that conclusion.

The opportunity for public participation also exists in the enforcement process. 40 C.F.R. §145.13(d), promulgated under 42 U.S.C. § 300h(b), requires that the state provide for public participation in state enforcement proceedings by allowing for intervention as a right in certain civil and administrative actions, or by implementing the three procedures described in §145.13(d)(2). By virtue of Tex. Gov't Code Ann. Chapter 551; Tex. Water Code Ann. §§5.177, 7.075, 7.110 (Vernon 1988 & Supp. 1998); 30 TAC Chapter 10; and sections §§70.10, 80.109, 80.111, 80.115, 80.254, 80.263, the Texas program meets these requirements, as discussed more fully below.

Handling of Complaints: Texas Water Code §5.177 provides for public participation in state enforcement proceedings, in conformance with §145.13(d)(2)(i), as follows: If a written complaint is filed with the Commission relating to an entity regulated by the Commission, the Commission must notify the parties to the complaint at least quarterly of the status of the complaint until final disposition of the complaint has been reached. This statute assures that the public will be kept regularly apprized of enforcement case status and will have a meaningful opportunity to participate as enforcement cases progress.

Administrative Enforcement Actions: Texas complies with 40 C.F.R. §145.13(d)(2)(ii) in the administrative context. Under 30 TAC §80.109, in a contested case in which failure to obtain a UIC permit or violation of a UIC permit is alleged, any person granted permissive intervention by the ALJ becomes a party. The Executive Director has agreed in the Memorandum of Agreement between the Commission and the EPA that he or she will not oppose intervention by persons having a justiciable interest in circumstances that do not, in his or her opinion, present a risk of undue delay or prejudice to the original parties.

At least two other opportunities for public participation in enforcement are afforded at the administrative level. First, before the evidentiary phase of a contested case hearing, if any, ALJs allow public comment by non-parties. 30 TAC §80.111. Second, decisions on matters like the ones under discussion must be set on the Commissioners' agenda for a final decision in compliance with the Open Meetings Act, Tex. Gov't Code Ann. Chapter 551. Public notice must be given. The public, including non-parties, may provide written comment, and an opportunity also may be afforded to make oral comment at the agenda meeting. See generally, e.g., 30 TAC Chapter 10; and §80.263.

Judicial Enforcement: Texas complies with the requirement of 40 C.F.R. §145.13(d)(2)(ii) in the judicial enforcement context. Under Tex. Water Code Ann. §7.110(d), the Office of the Attorney General may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

Rule 60 and common law doctrines of associational and individual standing create meaningful opportunities for citizen participation in civil penalty enforcement actions in court. In the case of Guaranty Federal Savings Bank v. Horseshoe Operating, 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 opposes 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 United States 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 United States Constitution. *Texas Association of Business v. Texas 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). See also *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, 112 S.Ct. 2130 (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 addressed 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. Stumberg*, 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.

Notice and Comment On Proposed Settlements: In the administrative and judicial enforcement contexts, Texas complies with 40 C.F.R. §145.13(d)(2)(iii). That provision requires the state to “[p]ublish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.”

Under 30 TAC §80.254, when the Executive Director and the respondent in an enforcement case that has gone to State Office of Administrative Hearings (SOAH) have reached an agreed settlement of an enforcement case, they shall submit the agreement to the ALJ in writing. The ALJ shall forward the proposed settlement to the Commission for consideration. If a party to the case dissents from the proposed settlement, the ALJ shall give such party a reasonable time to file comments, and shall forward all timely filed comments to the Commission. After any required public notice and opportunity for comment on proposed settlements (see the next paragraph) and consideration of the record, the Commission may either approve it or disapprove it and remand the case for hearing.

Under Tex. Water Code Ann. §7.075, before the Commission approves an administrative order or proposed agreement to settle an administrative enforcement action, the Commission shall allow the public to comment in writing on the proposed order or agreement. Notice of the opportunity to comment shall be published in the Texas Register not later than the 30th day before the date on which the public comment period closes. The Commission shall consider any written comments and may withdraw or withhold consent to the proposed order or agreement. Texas Water Code §7.075 applies to all settlements of administrative enforcement cases, regardless of whether they were referred to SOAH.

Under Tex. Water Code Ann. §7.110(a), before the court in a judicial enforcement action signs a judgment or other agreement settling a case, the Office of the Attorney General shall permit the public to comment in writing on the proposed order, judgment, or other agreement. Notice of the comment opportunity will be published in the Texas Register not later than the 30th day before the date on which the public comment period closes. Tex. Water Code Ann. §7.110(b). The Office of the Attorney General shall promptly consider any written comment and may withdraw or withhold consent to the proposed order, judgment, or other agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Commission's statutes, rules, or permits. Tex. Water Code Ann. §7.110(c).

VI. TEXAS HOUSE BILL 801, 76TH LEGISLATIVE SESSION, 1999

In the 76th Legislative Session, House Bill 801 was enacted. State law governing the public notice and hearing processes has been modified for those applications which were declared administratively complete on or after September 1, 1999. Permit applications declared administratively complete prior to September 1, 1999, will be processed under the former rules. The proposed rule changes affect procedural requirements associated with permits issued by the TNRCC under the RCRA program. Generally, the rules provide for early public notice, expanded public comment procedures, and streamlined contested case hearings; however, the rules are consistent with the analogous federal program requirements for public participation and have no impact on matters of equivalency. State law continues to provide greater opportunity for public participation in the permitting process than does federal law. TNRCC rules promulgated under the authority of House Bill 801 are located in 30 TAC Chapter 39 concerning Public Notice; 30 TAC Chapter 50 concerning Action on Applications; 30 TAC Chapter 55 concerning Request for Contested Case Hearings and Public Comment; 30 TAC Chapter 80 concerning Contested Case Hearings; 30 TAC Chapter 116 concerning Control of Air Pollution by Permits for New Construction or Modification; 30 TAC Chapter 122 concerning Federal Operating Permits; and 30 TAC Chapter 305 concerning Consolidated Permits.

The Notice of Proposed Permitting Actions provides information about applications and opportunities for public participation. Under the rules applicable to all applications declared administratively complete prior to September 1, 1999, as well as under the new procedural rules mandated by House Bill 801 passed by the 76th Texas Legislature (1999), the Chief Clerk mails the notice to potentially affected individuals and governmental authorities as prescribed by commission rules in Texas Administrative Code, Chapter 39. The Chief Clerk also mails notice on certain types of proposed permit actions to the applicant with instructions for publication in the newspaper. After notice is provided by mail, requests for public hearing are submitted to the Commission for consideration. The case may then be referred to the Office of Alternative Dispute Resolution, or ultimately to the State Office of Administrative Hearings (SOAH). Through its Office of Public Assistance, Environmental Law Division, and program staff, the Commission responds to all public comment received on an application. The Office of Public Assistance holds a public meeting when there is significant interest in a permit application, when an application might have substantial impact on human health and safety or the state's natural resources, or when required by law.

The new rules create new notice requirements. Under the new Chapter 39 rules, mandated by House Bill 801, the applicant must publish an extensive Notice of Receipt of Application and Intent to Obtain Permit within 30 days of an application for a RCRA permit being declared administratively complete. The Notice must be published in the newspaper of largest general circulation that is published in the county in which the facility is or will be located. §39.405(f)(2). Mailed notice to certain state and local officials is also required. In addition to published and mailed notice, the applicant must make a copy of the application

available for public review and copying in a public place within the county in which the facility is or will be located. 30 TAC §39.405(g).

Once the program staff completes technical review of the application and issues a draft permit, which must take into consideration any public comment received as a result of the first notice, a second notice -- Notice of Application and Preliminary Decision -- must be published and mailed in accordance with Chapter 39, Section 39.419 (relating to Notice of Application and Preliminary Decision). The applicant must comply with 30 TAC §39.503(d)(1) and publish in a newspaper of general circulation the Notice of Application and Preliminary decision at least once in a newspaper of general circulation in each county where the facility is located and in the counties which are adjacent or contiguous to county in which the facility is located. Applicants of hazardous waste facilities must also provide radio broadcast of the Notice of Application and Preliminary Decision in accordance with 30 TAC §39.503(d)(2). For industrial solid waste facility applications, the comment period must be at least 30 days. For hazardous waste applications, the comment period must be at least 45 days. 30 TAC §55.152. Again, in addition to the published Notice of Application and Preliminary Decision, the applicant must make a copy of the complete application and draft permit available in the county in which the facility is or will be located.

The applicant and Executive Director are authorized to hold public meetings to facilitate public input and the Executive Director is required to hold a public meeting at the request of a local legislator or if there is significant public interest exhibited. Public meetings will be held for new RCRA facilities and upon request for Class III modifications or major amendments to RCRA permits. Within 60 days of the close of the public comment period, the Executive Director must file with the Chief Clerk a response to each relevant, material, or significant public comment received on the application and preliminary decision. The responses to comment will be mailed by the Chief Clerk to the applicant, each timely commentor, and any person who requested to be on the mailing list. That mailing will also include instructions on how to (1) request reconsideration of the Executive Director's decision or (2) to request a contested case hearing. 30 TAC §50.201.

Although House Bill 801 public participation procedures apply to applications declared administratively complete on or after September 1, 1999, there are certain applications in process currently that are still subject to the former public participation rules. Under those rules, when a final draft permit (FDP) has been prepared by the program staff, it is mailed to the applicant for review, and a packet is assembled which contains the FDP, technical summary, compliance plan (if applicable), compliance summary, notice of draft permit, and a landowner notification list. The FDP packet is filed with the Chief Clerk. The Chief Clerk mails the notice of the draft permit to the applicant and other potentially affected persons, which includes information on opportunity for providing comment, for requesting a public meeting, and for requesting a contested case hearing. The applicant is responsible for providing newspaper notice in the area where the facility is or will be located, for new permits, renewed permits, and major amendments.

Any person, including the applicant, may provide comment or may request a public meeting or a contested case hearing any time before or within a period of 45 days for hazardous waste facilities and 30 days for nonhazardous waste facilities, after notice has been made.

There have been modifications to the rules governing the Response to Comment on Permit Application. Under the new public participation rules, public comment may be submitted any time from the publication of the first Notice of Receipt of Application and Intent to Obtain a Permit, through the second Notice of Application and Preliminary Decision, and may also be submitted during any public meeting. Within 60 days of the close of the public comment period, the Executive Director must file with the Chief Clerk a response to each relevant, material, or significant public comment received on the application and preliminary decision. The responses to comments will be mailed by the Chief Clerk to the applicant, each

timely commentor, and any person who requested to be on the mailing list. This notice will also inform interested persons how to request the reconsideration of the Executive Director's decision or how to request a contested case hearing. 30 TAC § 39.156.

Under the rules governing the applications declared administratively complete prior to September 1, 1999, the Commission's Office of Public Assistance and program staff consider and respond to public comment, whether received before, during, or after such notice is given, and may hold a public meeting when the Executive Director determines it is appropriate or mandated by the rules. Comments received from the public have the potential to cause amendment of the draft permit and/or to affect the final permit action. If a permit is amended in response to a comment received, the Executive Director is required to delineate the comment and the changes made in the Executive Director's official Response to Comments that must be filed before the commission or Executive Director issues the final permit.

If no contested case hearing is requested, the draft permit is sent to the Executive Director for signature of approval pursuant to § 5.122 of the Texas Water Code. If a request for a contested case hearing is made under 30 TAC Chapter 55, the Commission may refer the matter to its Office of Alternative Dispute Resolution before referring it to the State Office of Administrative Hearings (SOAH). The concerns of those who have requested hearings are often resolved at this stage without the expense of a contested case hearing. If such hearing is scheduled, it is presided over by an Administrative Law Judge from SOAH.

As a result of House Bill 801, procedures relating to Contested Case Hearings on Permitting Matters have been modified. Notice of a contested case hearing is published at least 30 days prior to the hearing date. For applications declared administratively complete prior to September 1, 1999, when the hearing is convened, the Administrative Law Judge (ALJ) will continue to allow comment from the public prior to beginning the presentation of evidence by the parties. For those hearings convened on applications declared administratively complete on or after September 1, 1999, there will be no additional opportunity to present public comment since there will already have been an extensive comment period and the possibility for a public meeting to have already been held. The Executive Director will have already responded to public comments.

At the completion of the hearing, the Administrative Law Judge forwards the findings of fact and recommendations to the Commission and the draft permit is placed on the Commission's agenda. The Commission may approve as written, modify and approve, or deny the application. The new public participation rules also anticipate that the final commission action on a contested permit matter under the House Bill 801 process will be a hybrid document. The Findings of Fact and Conclusions of Law contained in the Order proposed by the ALJ and supported by the proposal for decision (PFD) will be reviewed by the Commission and adopted, rejected, or adopted with amendments, leading to a final order on the contested issues. At the same time, it is anticipated that the Commission will reconsider the Response to Comments filed by the Executive Director and will adopt a Commission Response to Comments. Once the permit is issued, a copy is forwarded to the applicant.

The permitting procedure described above applies to new permits, permit renewals, and major permit amendments. Minor permit amendments follow similar procedures except that they do not provide an opportunity for a contested case hearing and the only notice required is given to persons specified in 30 TAC §§39.13, 39.17, 39.413, and 39.419, with a ten (10) day comment period. Uncontested new permits, uncontested permit renewals, and uncontested major and minor amendments of permits are issued under the signature of the Executive Director.

The Notice of Proposed Enforcement Actions provides notice of a proposed enforcement order or agreement to settle an administrative enforcement action and is published in the *Texas Register*. The public is allowed 30 days to comment on any proposed order or agreement. The commission is required to consider all written comments submitted and may withdraw or withhold consent of the proposed order or agreement. The commission may also proceed with adoption of the order or agreement, with or without changes to the document; however, further notice of changes to the proposed order or agreement is not required to be published if those changes arise from comments submitted in response to the first notice.

Matters referred to the State Office of Administrative Hearings are adjudicated by an Administrative Law Judge who maintains the official record, establishes findings of fact and conclusions of law, and forwards a proposal for decision (PFD) with recommendations to the Commissioners for final approval or denial. A decision by the Commission is subject to appeal pursuant to the Texas Water Code § 5.351 and the Administrative Procedures Act, Texas Government Code, Chapter 2001.

As a preliminary note, House Bill 801 public participation procedures do not apply to enforcement matters.

Under the rules applicable to enforcement actions, 30 TAC §80.109, allows intervention by a member of the public in administrative contested case enforcement hearings.¹⁵ Texas Water Code §7.110 states that in civil enforcement actions, the Attorney General may not oppose intervention by one with standing to intervene as provided by Texas Rule of Civil Procedure 60. Texas Water Code §7.075 requires publication of all proposed orders to settle an enforcement matter prior to commission consideration. Under that provision, the Executive Director publishes notice of the opportunity to comment on a proposed order or agreement in the *Texas Register* no later than the 30th day before the date on which the public comment period closes. In addition, the Chief Clerk's office maintains a mailing list of interested persons who are notified of the proposed order and of the opportunity to comment. The persons on the mailing list are notified quarterly of progress made in that particular case. The commission must consider any written comments prior to ruling on the proposed order or agreement. Changes to the proposed order or agreement stemming from public comments received must be delineated in the order adopted, however, notice of these changes is not required to be published if the changes arise from comments submitted in response to a previous notice.

Notice of Contested Case Enforcement Case Hearings is addressed in 30 TAC §39.425. If a contested case hearing is conducted, it proceeds at the State Office of Administrative Hearings (SOAH) in the manner described above. The proposal for decision (PFD) is published along with the proposed order in the *Texas Register* providing an opportunity to comment. The ALJ presents the comments to the commission for consideration after all parties have been afforded an opportunity to respond. This procedure assumes the public has not participated in the hearing.

¹⁵

See also discussion in Section V *Infra* this Cluster VI Program Description.

VII. FUNDING AND RESOURCES

The organizational structure of the Commission is shown on the Organization Map, enclosed as part of the Cluster VI Program Revision. The agency has been reorganized along both programmatic and functional lines to make for an effective, efficient, and responsive public agency. Permitting responsibilities for each major program have been vested in the Office of Permitting. All planning responsibilities have been established in the Office of Policy and Regulatory Development. Enforcement responsibilities for all agency programs are vested in the Office of Compliance and Enforcement to assure consistency and allow better coordination of multi-media enforcement actions.

The Office of Waste Permitting (Waste Permits, Remediation, and Registration & Evaluation Divisions) administers and oversees all aspects of hazardous and industrial solid waste activities in Texas. The Office of Compliance and Enforcement (Field Operations and Enforcement Divisions) performs compliance monitoring and enforcement activities for the Commission. The Office of Legal Services provides the legal representation and advice required by the Executive Director of the Commission and his technical and administrative staff. The Litigation Support Division provides legal support in enforcement matters. The Small Business and Environmental Assistance Division administers the pollution prevention and small business assistance programs.

A. TABLE 1 STAFFING

Table 1 shows staffing within the TNRCC Strategies that include RCRA/HSWA activities and the percentage of effort devoted to the implementation of the industrial and hazardous waste management program.

Table 1	
State Agency Staff Carrying Out the Program Fiscal 2000 (proposed)	
Strategy	Number of Work years
01-01-03 Waste Management & Permitting	60.23
01-01-07 Pollution Prevention & Recycling	1.00
02-01-01 Field Inspections & Compliant Response	55.00
02-01-02 Enforcement & Compliance Support	23.50
03-01-03 Hazardous Materials Cleanup	25.65
TOTAL	165.38

B. TABLE 2 FUNDING

Budget requirements for the fiscal year are met through federal assistance funds authorized by Sec. 3011 of Subtitle C, Hazardous Waste Management of RCRA, and made available by a Federal Cooperative Agreement between EPA and the State of Texas. Seventy-five percent of the funding is provided by the EPA and the twenty-five percent state match is provided by funds assessed by the Commission through user fees and appropriated by the Texas Legislature.

Since the beginning of state fiscal year 1986, the funding support to state hazardous waste regulatory programs and remediation activities at abandoned waste disposal sites has been provided almost exclusively by fees assessed against industries involved in the production or management of hazardous wastes.

Table 2 shows the allocation of federal and non-federal resources dedicated to the implementation of the RCRA program as requested in the FY 2000 Performance Partnership Agreement (PPA).

Table 2		
Strategy	Federal	Non-Federal
01-01-03 Waste Management & Permitting	3,056,863	1,018,954
01-01-07 Pollution Prevention & Recycling	63,662	21,220
02-01-01 Field Inspections & Compliant Response	2,913,681	971,227
02-01-02 Enforcement & Compliance Support	1,126,765	375,588
03-01-03 Hazardous Materials Cleanup	1,339,029	446,343
TOTAL	8,500,000	2,833,333

C. TABLE 3 COSTS

Table 3 shows the distribution of federal and non-federal funds by object class category for fiscal 1997 and 1998.

Table 3		
Costs by Object Class Categories		
Expense Item	FY 97 Total Costs	FY 98 Total Costs
Work Years		177.92
Salary (including Release Time)	\$7,244,937	\$6,861,896
Fringe (.2184)	1,582,295	1,498,638
Indirect	2,476,319	2,345,396
SUBTOTAL	11,303,551 ^a	10,705,930 ^b
Travel	406,227	460,229
Equipment	216,000	216,000
Supplies	198,144	198,144
Contractual	206,313	536,313
Other	724,777	724,777
TOTAL	13,109,012	12,841,393
^a - for FY 97 Indirect Rate is 30.40%		
^b - for FY 98 Indirect Rate is 39.82%		

D. TABLE 4 ACTIVITIES

The estimated number of regulated activities related to waste generation and management is summarized in Table 4.

TABLE 4		
ESTIMATED STATE OF TEXAS ACTIVITIES SUBJECT TO PROGRAM REVISION REQUIREMENTS FOR 1997		
Type of Activity	Number of Handlers (Texas)	Waste Quantities Tons (Texas)
Hazardous Waste Generators	8,232 (2)	68,867,113 (1)
Tons of Hazardous Waste Transported Into Texas		276,275 (1)
Tons of Hazardous Waste Transported Out Of Texas		275,004 (1)

LEGEND

- (1) All volume data is based upon 1997 data.
- (2) Number of active generators within Texas with a hazardous or class 1 waste stream on their Notice of Registration (NOR). It includes LQG and SQG.

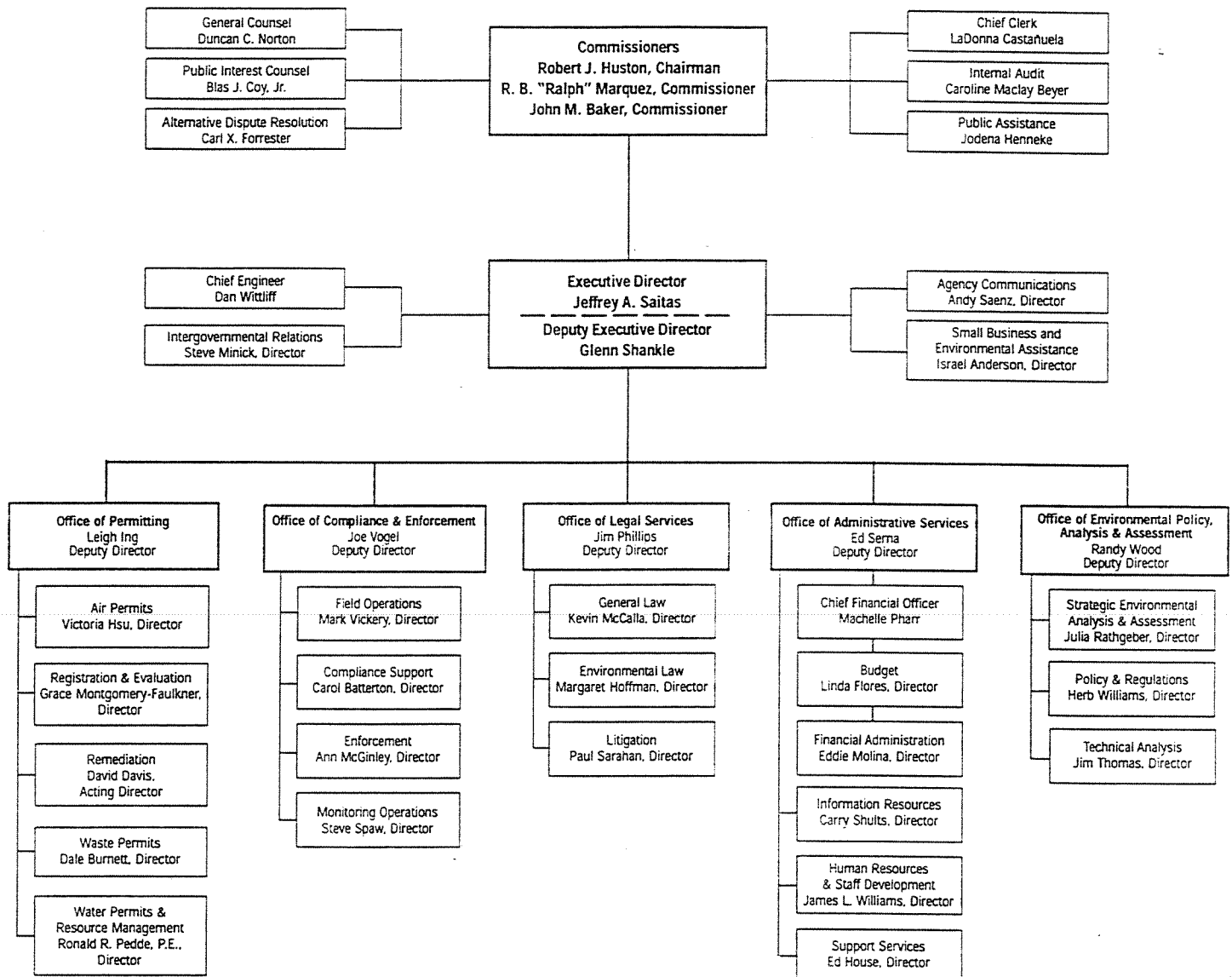
E. TABLE 5 EFFECT ON WORKLOADS

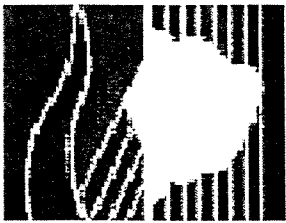
REGULATION WORKLOAD EFFECT OF NEW REQUIREMENTS ON TNRCC WORKLOADS	EFFECT ON TNRCC (Major/Minor)
1. <u>Liquids in Landfills III</u> Hazardous Waste Management; Liquids in Landfills. Checklist 145. HSWA Provision. 60 FR 35703 - 35706.	None
2. <u>RCRA Expanded Public Participation</u> Checklist 148. Non-HSWA Provision. 60 FR 63417 - 63434.	Moderate
3. <u>Recovered Oil Exclusion, Correction</u> Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste. Checklist 150. Non-HSWA Provision. 61 FR 13103 - 13106.	Minor
4. <u>Land Disposal Restrictions Phase III:</u> <u>Decharacterized Waste Waters, Carbamate Wastes, and Spent Potliners</u> Checklist 151. HSWA Provision. 61 FR 15566-15660; 61 FR 15660-15668; 61 FR 19117; 61 FR 33680-33691; 61 FR 36419-36421; 61 FR 43924-43931; and 62 FR 7502-7600.	Minor
5. <u>Imports and exports of hazardous Waste:</u> <u>Implementation of OECD Council Decision</u> 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. 61 FR 16290-16316.	Minor



TNRCC ORGANIZATION

September 1, 1999



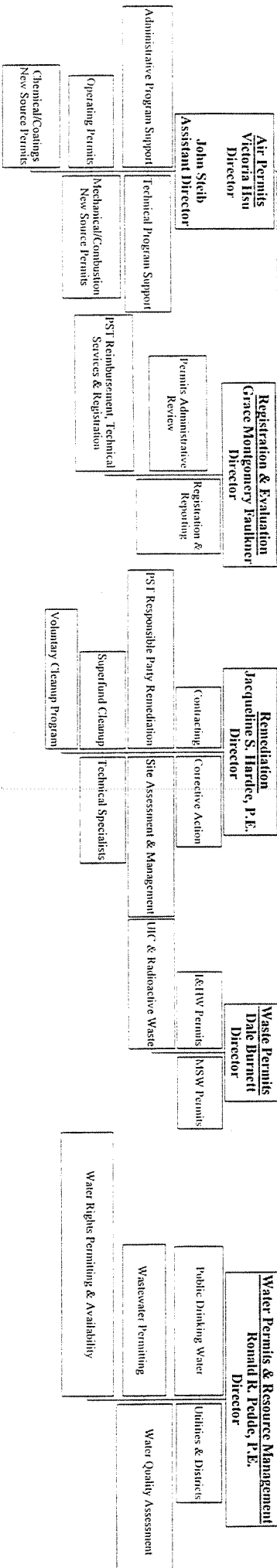


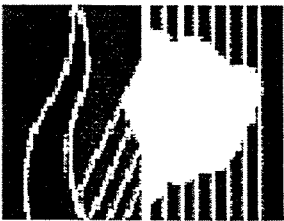
TNRCC

Leigh Ing
Deputy Director

Office of Permitting

Organizational Chart
October 1, 1999



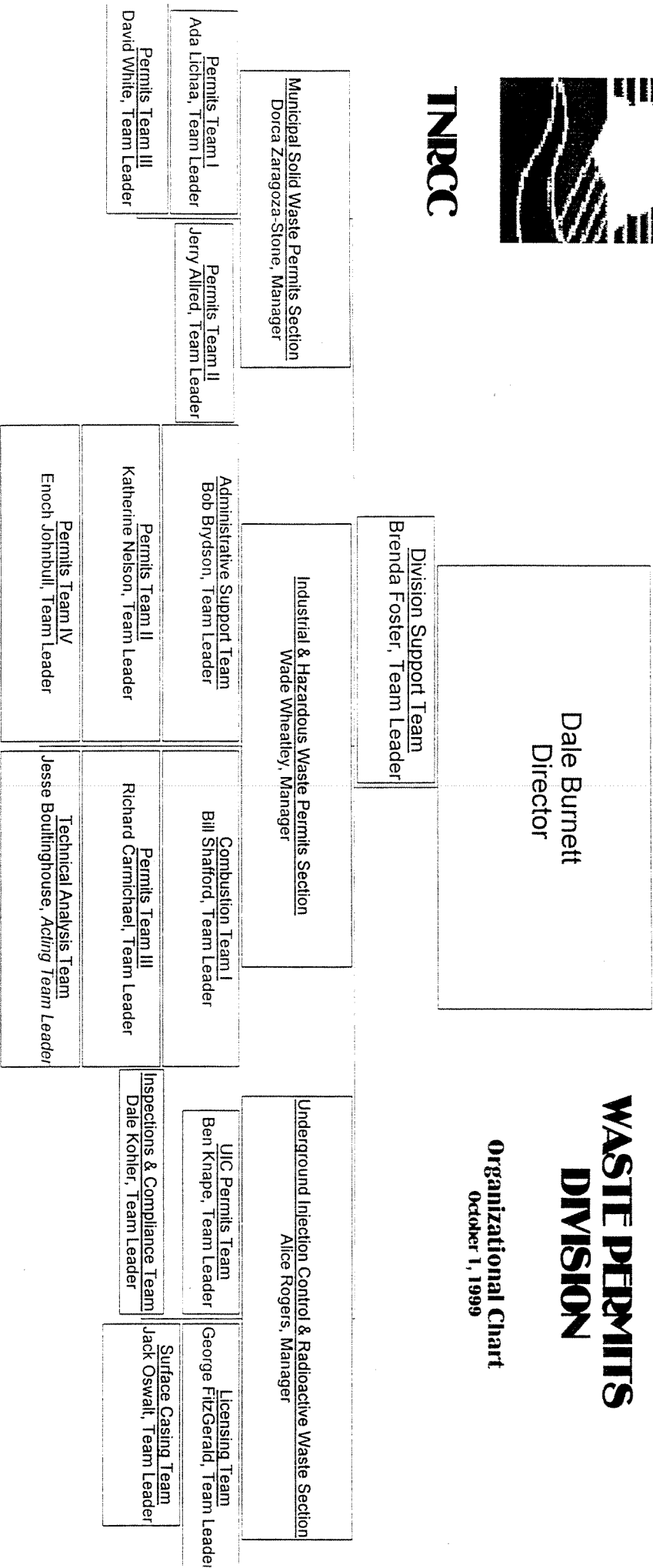


INRCC

Office of Permitting

WASTE PERMITS DIVISION

Organizational Chart October 1, 1999





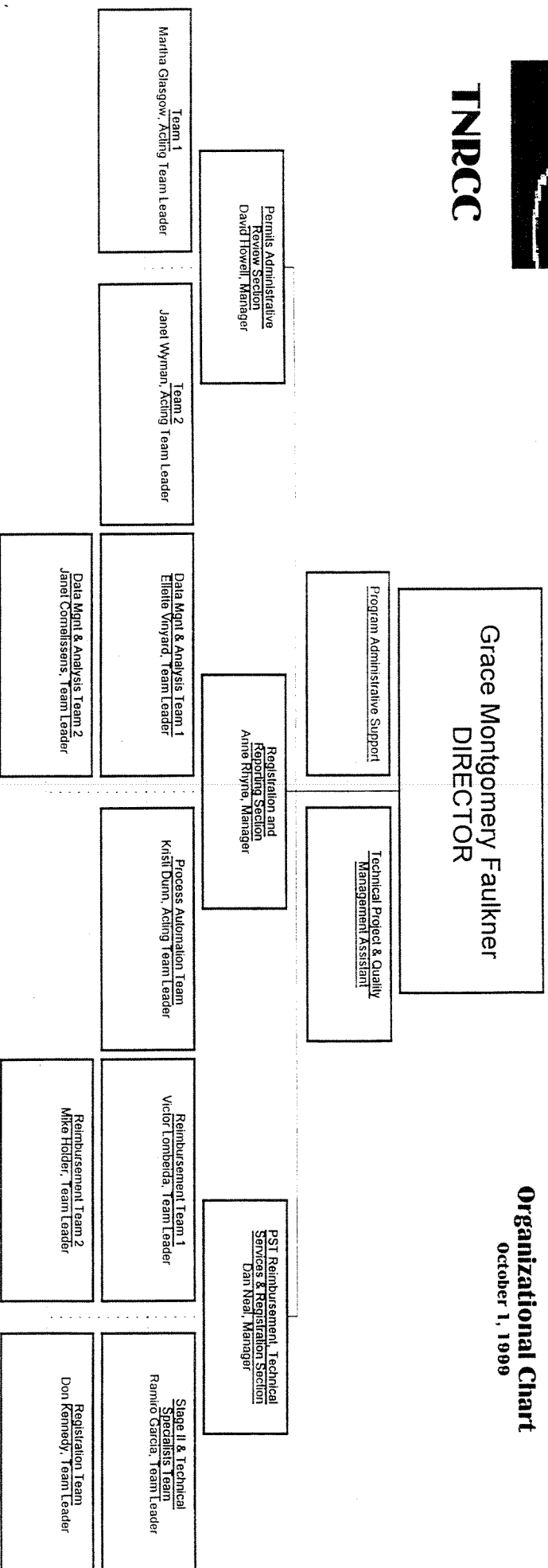
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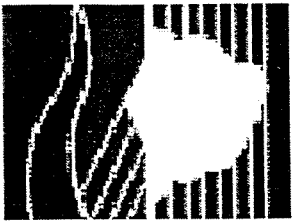
Office of Permitting

REGISTRATION & EVALUATION DIVISION

Organizational Chart

October 1, 1999



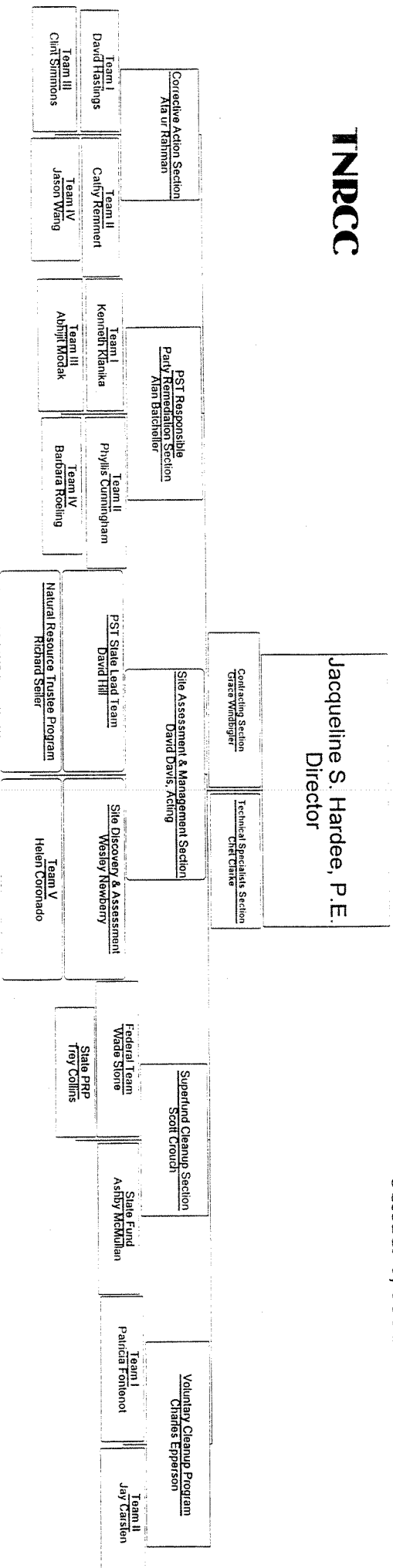


TNRCC

Office of Permitting

REMEDIATION DIVISION

Organizational Chart
October 1, 1999





TNRCC

Office of Permitting

**WATER PERMITS &
RESOURCE MANAGEMENT
DIVISION**

Ronald R. Pedde, P.E.
Director

Organizational Chart
October 1, 1999

<u>Public Drinking Water Section</u> Charles Maddox	<u>Utilities & Districts Section</u> Sam Jones	<u>Wastewater Permitting Section</u> Robert Robinson	<u>Water Quality Assessment Section</u> Jim Davenport, Acting	<u>Water Rights Permitting & Availability Section</u> Herman Settemeyer, Acting
<u>Administrative & Database Maintenance</u> Linda Leatherwood	<u>Administrative Support</u> Wanda Morgan	<u>Administrative Support</u> Pat Valdez	<u>Administrative Support</u> Betty Young	<u>Conservation & Drought Management</u> John Warden
<u>Drinking Water Monitoring</u> Ron Bearden	<u>Special Projects</u> Steve Blackhurst Wayne Wiley	<u>Agriculture Core</u> Hart Krishna	<u>Groundwater Protection</u> Paul Reynolds, Acting	<u>Instream Uses</u> Doyle Mosler
<u>Regulatory Planning & Data Quality</u> Tony Bennett	<u>Application Support</u> Kale Wilkins, Acting	<u>Industrial Permits</u> Chris Linandoll	<u>Water Quality Assessment</u> Faith Hambleton	<u>Surface Water Availability</u> Interstate Compacts Kirk Kennedy
<u>Source Water Assessment & Protection</u> Brad Cross	<u>District Applications</u> Rob Cummings	<u>Municipal Permits</u> Dale White	<u>Water Quality Standards</u> Jim Davenport	<u>Water Rights Permits</u> Terry Slade, Acting
<u>Surface Plant Evaluation</u> Jack Schultze	<u>Rate Analysis & Plan Review</u> Joe Strouse	<u>Pretreatment Core</u> Jill Russell		<u>Weather Modification</u> George Bomar
<u>Surveillance & Technical Assistance</u> James Pope	<u>Utility & District Oversight</u> Diego Abrego	<u>Sludge Core</u> Joe Thomas		
<u>Water Information & Resource Development</u> Barbara Henry	<u>Utility Certification & District Creation</u> Doug Holcomb	<u>Stormwater</u> Steve Ligon		



TNRCC

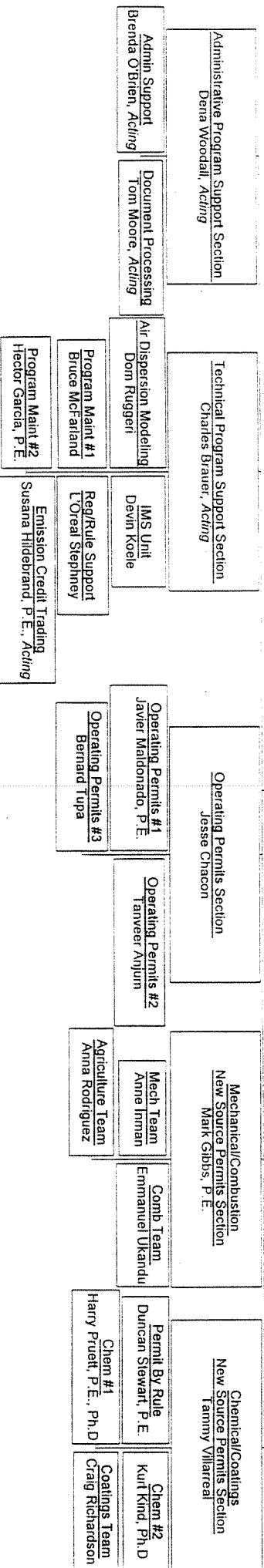
Victoria Hsu
Director

John Steib
Assistant Director

Office of Permitting

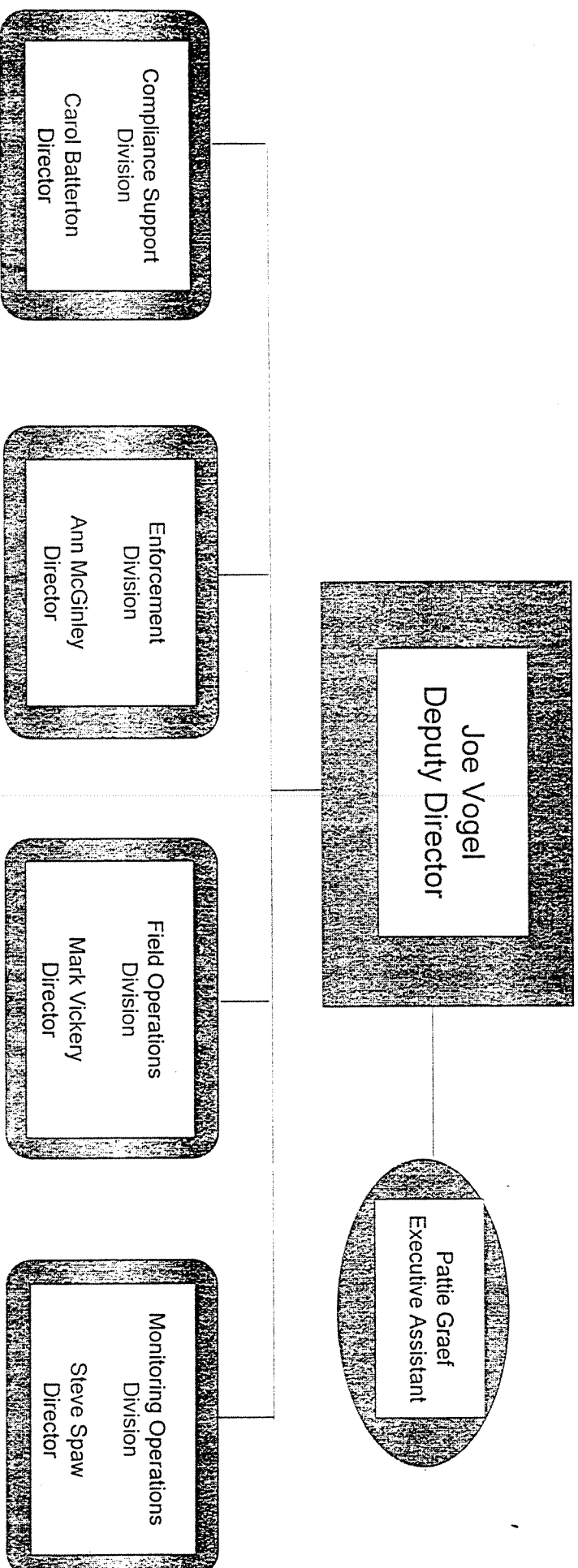
AIR PERMITS DIVISION

Organizational Chart
October 1, 1999

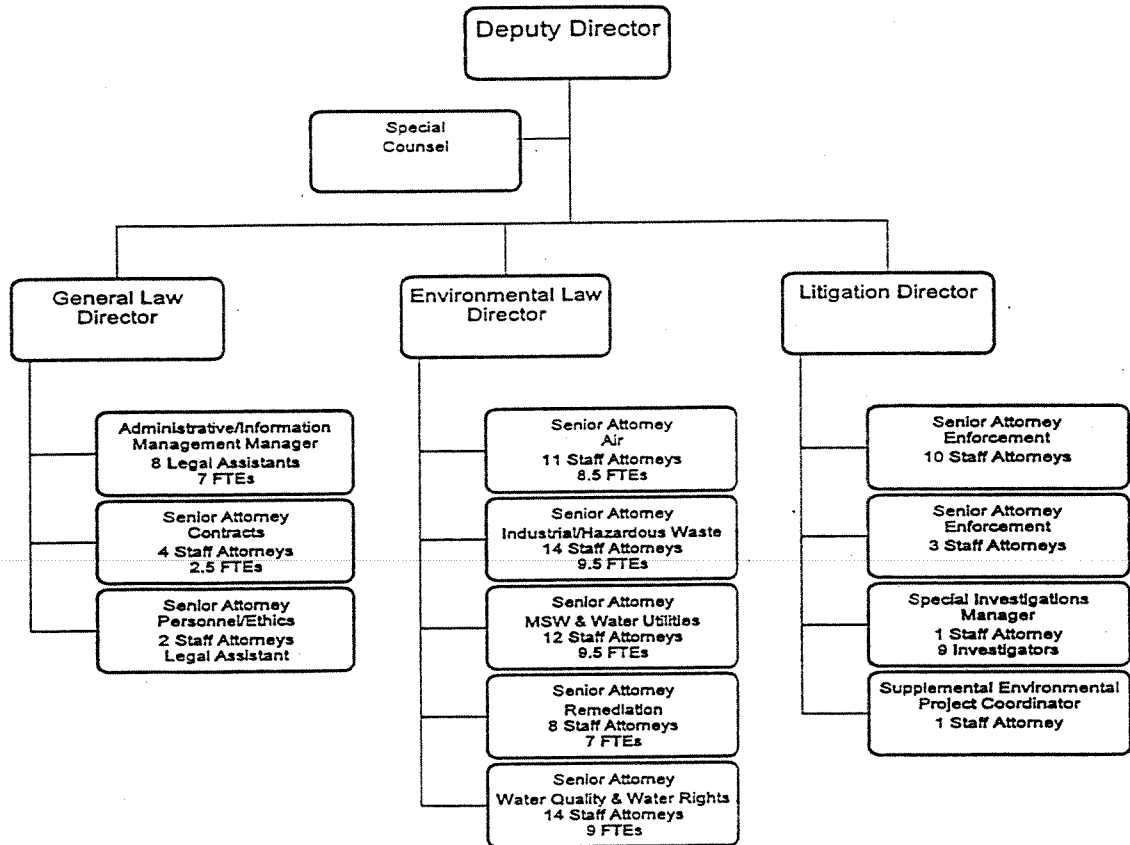


OFFICE OF COMPLIANCE AND ENFORCEMENT

August 1999



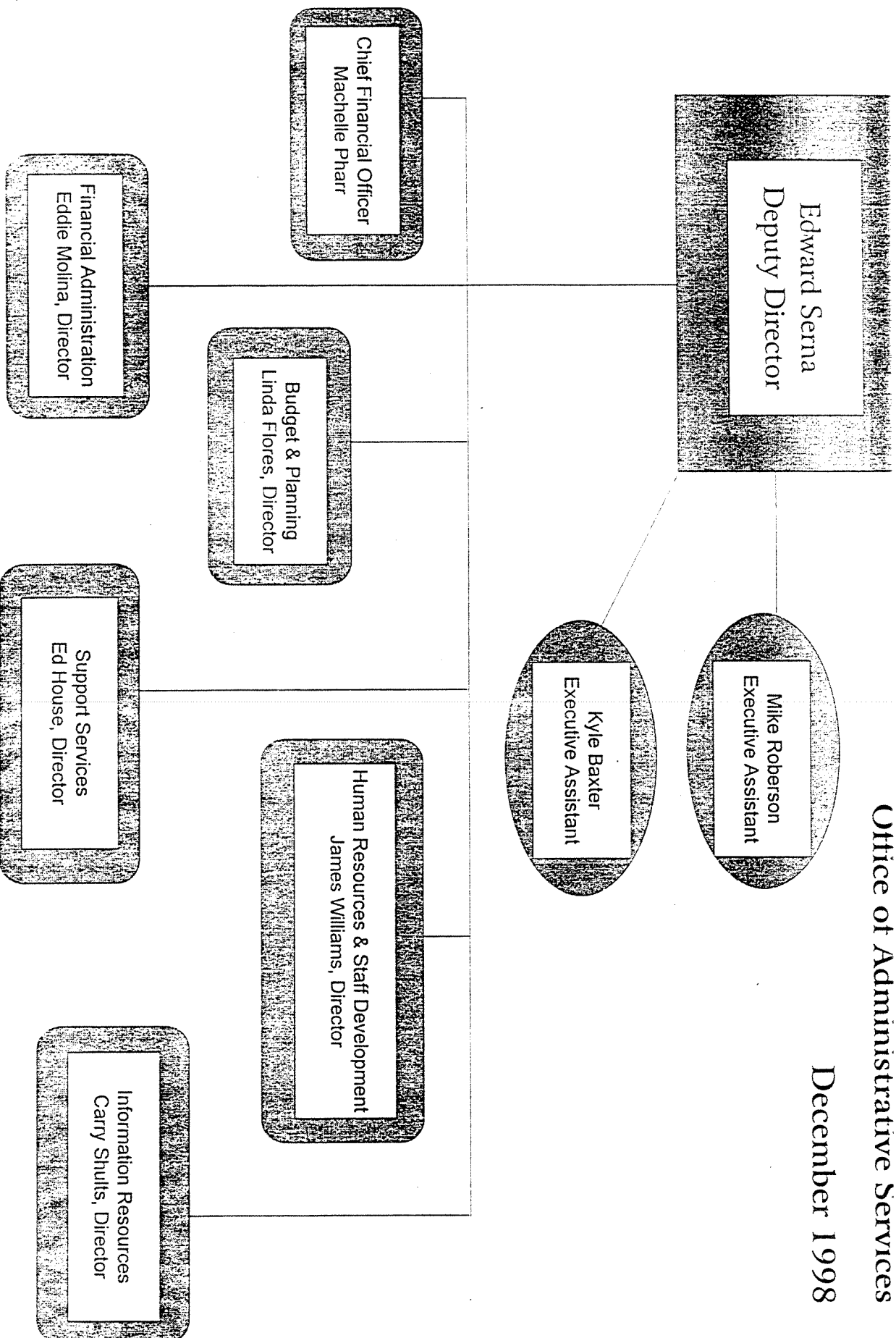
Office of Legal Services*



* Excludes Administrative Support Staff

Office of Administrative Services

December 1998



**OEPA
ORGANIZATION
CHART**

September 24, 1999

