

US EPA ARCHIVE DOCUMENT

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ment rate as determined by §304.62 of this title (relating to Determination of Assessment Rates). For any water right authorizing storage and more than one type of use for the same owner, the storage fee for that owner's total storage authorization shall be applied to the assessment account for any one of the uses associated with that owner.

(b) The assessment shall be paid to the executive director in advance of expenditures. The executive director shall specify the dates by which payments shall be due, and may provide for payments in installments. Penalties and interest for the late payment of fees shall be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees). If fees are paid in installments, penalties and inter-

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est for late payment shall be computed on the amount of the installment due. The executive director shall transmit all collections to the state treasurer to be held in a special fund to provide for the cost of the watermaster operation.

(c) Water shall not be diverted, taken, stored, or used by any diverter or agent while any assessment payment is delinquent.

(d) Either the water right owner or agent shall pay the assessment, but only one person per assessment account shall be authorized to pay assessments.

Source: The provisions of this §304.63 adopted to be effective August 5, 1988, 13 TexReg 3639; amended to be effective February 14, 1997, 22 TexReg 1325.

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SUBCHAPTER A. GENERAL PROVISIONS

§ 305.1. Scope and Applicability

(a) The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under the Texas Water Code, Chapters 26, 27, and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

(b) The national pollutant discharge elimination system (NPDES) program, as delegated to the State of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system. The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in the Texas Water Code, §26.001.

(1) The following are point sources requiring TPDES permits for discharges:

(A) concentrated animal feeding operations as defined in Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations);

(B) concentrated aquatic animal production facilities as defined in 40 Code of Federal Regulations §122.24;

(C) discharges into aquaculture projects as set forth in 40 Code of Federal Regulations §122.25;

(D) discharges from separate storm sewers as set forth in 40 Code of Federal Regulations §122.26; and

(E) silvicultural point sources as defined in 40 Code of Federal Regulations §122.27.

(2) The TPDES permit program also applies to

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owners or operators of any treatment works treating domestic sewage, unless all requirements implementing the Clean Water Act (CWA), §405(d), applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of the Federal Solid Waste Disposal Act, Subtitle C, the Safe Drinking Water Act, Part C, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the regional administrator as adequate to assure compliance with the Clean Water Act, §405.

(3) The executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for the sludge use and disposal developed under the Clean Water Act, §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement of basis for the permit.

Source: The provisions of this §305.1 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492.

§ 305.2. Definitions

The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Application**—A formal written request for commission action relative to a permit, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

(2) **Bypass**—The intentional diversion of a waste stream from any portion of a treatment facility.

(3) **Class I sludge management facility**—Any publicly owned treatment works (POTW) identified under 40 Code of Federal Regulations §403.10(a) as being required to have an approved pretreat-

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ment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(4) **Component**—Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

(5) **Continuous discharge**—A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(6) **Corrective action management unit or CAMU**—An area within a facility that is designated by the commission under 40 Code of Federal Regulations, Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action). A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(7) **CWA—Clean Water Act** (formerly referred to as the Federal Water Pollution and Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 United States Code §1251 et seq.

(8) **Daily average concentration**—The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) For domestic wastewater treatment plants—When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) For all other wastewater treatment plants—When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the

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month shall be the concentration.

(9) **Daily average** of all determination a period of one calendar flow determination made on at least five consecutive measurements daily discharge, the average of all instantaneous daily discharge if the average flow determination charges shall consider determinations on

(10) **Direct discharge** pollutant.

(11) **Discharge** n EPA uniform national additions, or the reporting of permittees.

(12) **Disposal**—T tion, dumping, spill solid, liquid, or hazardous land, or into or adjacent so that such waste enter the environment discharged into or into groundwaters.

(13) **Disposal facility** at which solid into or on any land will remain after clarity does not include ment unit into which placed.

(14) **Effluent limit** posed on quantities of pollutants point sources into

(15) **Environment** The United States Agency.

(16) **Facility**—In (A) all contiguous, or appurtenant, treating injection activity several storage, or or injection operations

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(9) Daily average flow—The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

(10) Direct discharge—The discharge of a pollutant.

(11) Discharge monitoring report (DMR)—The EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

(12) Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

(13) Disposal facility—A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(14) Effluent limitation—Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

(15) Environmental Protection Agency (EPA)—The United States Environmental Protection Agency.

(16) Facility—Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units;

(B) for the purpose of implementing correc-

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tive action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action).

(17) Facility mailing list—The mailing list for a facility maintained by the commission in accordance with 40 Code of Federal Regulations (CFR) §124.10(c)(1)(ix) and §39.7 of this title (relating to Public Notice). For Class I injection well UIC permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(18) Functionally equivalent component—A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(19) Indirect discharger—A nondomestic discharger introducing pollutants to a POTW.

(20) Injection well permit—A permit issued pursuant to Texas Water Code, Chapter 27.

(21) Land disposal facility—Includes landfills, waste piles, surface impoundments, land farms, and injection wells.

(22) National Pollutant Discharge Elimination System (NPDES)—The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405. The term includes an approved program.

(23) New discharger—

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective NPDES permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source

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(other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

(24) New source—Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under CWA, §306; or

(B) after proposal of standards of performance in accordance with CWA, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

(25) Operator—The person responsible for the overall operation of a facility.

(26) Outfall—The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to the water in this state.

(27) Owner—The person who owns a facility or part of a facility.

(28) Permit—A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, and an injection well permit.

(29) Person—An individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, partnership, or any other legal entity or association.

(30) Primary industry category—Any industry category listed in 40 Code of Federal Regulations, Part 122, Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

(31) Process wastewater—Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(32) Processing—The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment

or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage, or volume reduction. The meaning of transfer as used here, does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline, or other means.

(33) Publicly owned treatment works (POTW)—Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(34) Radioactive material—A material which is identified as a radioactive material under Texas Civil Statutes, Article 4590f, as amended, and the rules adopted by the Texas Board of Health pursuant thereto.

(35) Recommencing discharger—A source which recommences discharge after terminating operations.

(36) Regional administrator—Except when used in conjunction with the words "state director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Natural Resource Conservation Commission, or to the Texas Natural Resource Conservation Commission, consistent with the organization of the agency as set forth in the Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state director" in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 Code of Federal Regulations, Part 122, is available for inspection at the library of the Texas Natural Resource Conservation Commission, located in Room B-20 of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin.

(37) Remediation waste—All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste character, that are managed for the purpose of implementing corrective action requirements under

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§335.167 of this title for Solid Waste Management and Solid Waste Disposal Safety Code, §361 Action). For a given title may originate only, but may include corrective action boundary under Act, the Texas Health (concerning Correction this title (relating to or §335.167(c) of the Action for Solid Waste

(38) Schedule of remedial measures including an enforceable measures (e.g., action events) leading to regulations.

(39) Severe physical damage to facilities which capable, or substantial resources which occur in the absence of damage does not by delays in production

(40) Sewage sludge precipitate separator or municipal wastewater treatment works.

(41) Site—The facility or activity conducted, including action with the facility

(42) Solid waste pursuant to Texas Civil Statutes, as amended.

(43) Storage—Temporary period, at which processed, recycled elsewhere. Wastewater permit issued pursuant Chapter 26.

(44) Texas pollutant (TPDES)—The amending, terminating permits, and implementation requirements and 405, the Texas Administrative Code regulating

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§335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (concerning Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

(38) ~~Schedule of compliance~~—A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with CWA and regulations.

(39) ~~Severe property damage~~—Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

(40) ~~Sewage sludge~~—The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

(41) ~~Site~~—The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(42) ~~Solid waste permit~~—A permit issued pursuant to Texas Civil Statutes, Article 4477-7, as amended.

(43) ~~Storage~~—The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere. Wastewater discharge permit—A permit issued pursuant to the Texas Water Code, Chapter 26.

(44) ~~Texas pollutant discharge elimination system (TPDES)~~—The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405, the Texas Water Code, and Texas Administrative Code regulations.

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(45) ~~Toxic pollutant~~—Any pollutant listed as toxic under the CWA, §307(a), or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing CWA §405(d).

(46) ~~Treatment works treating domestic sewage~~—A POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

(47) ~~Variance~~—Any mechanism or provision under CWA, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA or this title.

(48) ~~Wastewater discharge permit~~—A permit issued pursuant to the Texas Water Code, Chapter 26.

(49) ~~Wetlands~~—Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

Source: The provisions of this §305.2 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 22, 1994, 19 TexReg 941; amended to be effective December 1, 1997, 22 TexReg 11391; amended to be effective August 8, 1999, 24 TexReg 5879

§ 305.3. Abbreviations

The following abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) CFR—Code of Federal Regulations.
- (2) CWA—Clean Water Act.
- (3) DMR—Discharge monitoring report.
- (4) EPA—United States Environmental Protection Agency.
- (5) NPDES—National pollutant discharge elimination system.
- (6) POTW—Publicly owned treatment works.
- (7) TPDES—Texas pollutant discharge elimination system.

30 TAC § 305.3

Source: The provisions of this §305.3 adopted to be effective October 8, 1990, 15 TexReg 5492.

SUBCHAPTER B. EMERGENCY ORDERS, TEMPORARY ORDERS, AND EXECUTIVE DIRECTOR AUTHORIZATIONS

§ 305.21. Emergency Orders and Temporary Orders Authorized

The commission or executive director may issue emergency orders, or the commission may issue temporary orders, relating to the discharge of waste or pollutants into or adjacent to any water in the state under Texas Water Code, §5.509, and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

Source: The provisions of this §305.21 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective December 10, 1998, 23 TexReg 12440.

§ 305.29. Emergency Orders for Solid Waste Activities

The commission or executive director may issue a mandatory or prohibitory emergency order regarding any activity of solid waste management within its jurisdiction under Texas Water Code, §5.512 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

Source: The provisions of this §305.29 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective February 11, 1997, 22 TexReg 1168; amended to be effective December 10, 1998, 23 TexReg 12440.

§ 305.30. Emergency Actions Concerning Hazardous Waste

The commission or executive director may issue an emergency administrative order relating to hazardous waste under Texas Water Code, §5.512 and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

Source: The provisions of this §305.30 adopted to be effective December 10, 1998, 23 TexReg 12440.

§ 305.31. Emergency Orders Relating to Radioactive Substances

When an emergency exists as a result of a matter under the commission's jurisdiction that requires immediate action to protect the public health or safety or the environment, the commission or executive director may issue an order under Texas Water Code, §5.516, Texas Health and Safety Code, §401.

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056, and Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) stating the existence of the emergency and requiring that actions be taken to meet the emergency.

Source: The provisions of this §305.31 adopted to be effective June 5, 1997, 22 TexReg 4583; amended to be effective December 10, 1998, 23 TexReg 12440.

SUBCHAPTER C. APPLICATION FOR PERMIT

§ 305.41. Applicability

The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under Texas Water Code Chapters 26, 27 and 28, and Texas Health and Safety Code Chapters 361 and 401.

Source: The provisions of this §305.41 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.42. Application Required

(a) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and Texas Health and Safety Code §361.082(e) shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under Texas Health and Safety Code Chapter 361, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §6901 et seq., that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 Code of Federal Regulations §270.73 and certify that such a facility is in compliance with

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(c) An application renewed radioactive r 336 of this title (rel Rules) shall consist copies. The executi tional copies. Copies under Chapter 336, ing to Licensing R Land Disposal of R tained by the appli dence with written director.

(d) For applicatio management faciliti erator has submitte tion and has not y operator is subject to the Part A applicat Regulations §270.10 the Code of Federal 1995 (see 60 FedReg

Source: The provisions June 19, 1986, 11 TexReg 1987, 12 TexReg 2102; am TexReg 4071; amended to 6015; amended to be ef amended to be effective C

§ 305.43. Who

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Source: The provision June 19, 1986, 11 TexReg 1987, 12 TexReg 2102; an TexReg 5492.

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all applicable groundwater monitoring and financial
responsibility requirements.

(c) An application for a new, amended, or re-
newed radioactive material license under Chapter
336 of this title (relating to Radioactive Substance
Rules) shall consist of one signed original and five
copies. The executive director may request addi-
tional copies. Copies of an application for a license
under Chapter 336, Subchapter H of this title (relat-
ing to Licensing Requirements for Near-Surface
Land Disposal of Radioactive Waste) shall be re-
tained by the applicant for distribution in accor-
dance with written instructions from the executive
director.

(d) For applications involving hazardous waste
management facilities for which the owner or op-
erator has submitted Part A of the permit applica-
tion and has not yet filed Part B, the owner or
operator is subject to the requirements for updating
the Part A application under 40 Code of Federal
Regulations §270.10(g), as amended and adopted in
the Code of Federal Regulations through June 29,
1995 (see 60 FedReg 33911).

Source: The provisions of this §305.42 adopted to be effective
June 19, 1986, 11 TexReg 2593; amended to be effective July 14,
1987, 12 TexReg 2102; amended to be effective August 30, 1988, 13
TexReg 4071; amended to be effective October 29, 1990, 15 TexReg
6015; amended to be effective June 5, 1997, 22 TexReg 4583;
amended to be effective October 19, 1998, 23 TexReg 10653.

§ 305.43. Who Applies

(a) It is the duty of the owner of a facility to
submit an application for a permit; however, if the
facility is owned by one person and operated by
another and the executive director determines that
special circumstances exist where the operator or
the operator and the owner should both apply for a
permit, and for all Texas pollutant discharge elimi-
nation system (TPDES) permits, it is the duty of the
operator and the owner to submit an application for
a permit.

(b) For solid waste and hazardous waste permit
applications, it is the duty of the owner of a facility
to submit an application for a permit, unless a
facility is owned by one person and operated by
another, in which case it is the duty of the operator
to submit an application for a permit.

Source: The provisions of this §305.43 adopted to be effective
June 19, 1986, 11 TexReg 2593; amended to be effective July 14,
1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15
TexReg 5492.

§ 305.44. Signatories to Applications

(a) All applications shall be signed as follows.

(1) For a corporation, the application shall be

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signed by a responsible corporate officer. For
purposes of this paragraph, a responsible corpo-
rate officer means a president, secretary, trea-
surer, or vice-president of the corporation in charge
of a principal business function, or any other
person who performs similar policy or decision-
making functions for the corporation; or the man-
ager of one or more manufacturing, production,
or operating facilities employing more than 250
persons or having gross annual sales or expendi-
tures exceeding \$25 million (in second-quarter
1980 dollars), if authority to sign documents has
been assigned or delegated to the manager in
accordance with corporate procedures. Corporate
procedures governing authority to sign permit
applications may provide for assignment or del-
egation to applicable corporate positions rather
than to specific individuals.

(2) For a partnership or sole proprietorship, the
application shall be signed by a general partner or
the proprietor, respectively.

(3) For a municipality, state, federal, or other
public agency, the application shall be signed by
either a principal executive officer or a ranking
elected official. For purposes of this paragraph, a
principal executive officer of a federal agency
includes the chief executive officer of the agency,
or a senior executive officer having responsibility
for the overall operations of a principal geo-
graphic unit of the agency (e.g., regional admin-
istrator of the United States Environmental Pro-
tection Agency).

(b) A person signing an application shall make the
following certification: "I certify under penalty of
law that this document and all attachments were
prepared under my direction or supervision in ac-
cordance with a system designed to assure that
qualified personnel properly gather and evaluate the
information submitted. Based on my inquiry of the
person or persons who manage the system, or those
persons directly responsible for gathering the infor-
mation, the information submitted is, to the best of
my knowledge and belief, true, accurate, and
complete. I am aware there are significant penalties
for submitting false information, including the pos-
sibility of fine and imprisonment for knowing
violations."

(c) For hazardous solid waste permit applica-
tions, the owner and operator of a facility must sign
the application.

(d) For radioactive material license applications
under Chapter 336 of this title (relating to Radioac-
tive Substance Rules), the applicant or person duly

30 TAC § 305.44

authorized to act for and on the applicant's behalf must sign the application.

Source: The provisions of this §305.44 adopted to be effective June 19, 1986, 11 TexReg 2591; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.45. Contents of Application for Permit

(a) Forms for permit applications will be made available by the executive director. Except for applications under Chapter 336 of this title (relating to Radioactive Substance Rules), each application for permit shall include the following:

- (1) the name, mailing address, and location of the facility for which the application is submitted;
- (2) the ownership status as federal, state, private, public, or other entity;
- (3) the applicant's name, mailing address, and telephone number;
- (4) a brief description of the nature of the business;

(5) the activities conducted by the applicant which require a permit;

(6) a topographic map, ownership map, county highway map, or a map prepared by a registered professional engineer or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the map area;

(B) the general character of the areas adjacent to the facility, including public roads, towns and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped, and so forth;

(C) the location of any waste disposal activities conducted on the tract not included in the application;

(D) the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity;

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(E) such other information that reasonably may be requested by the executive director;

(7) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management Program under the Texas Solid Waste Disposal Act;

(B) Underground Injection Control (UIC) Program under the Texas Injection Well Act;

(C) National Pollutant Discharge Elimination System (NPDES) Program under the Federal Clean Water Act (CWA) and Waste Discharge Program under the Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration (PSD) Program under the Federal Clean Air Act;

(E) Nonattainment Program under the Federal Clean Air Act;

(F) national emission standards for hazardous pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(G) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) dredge or fill permits under the Federal Clean Water Act;

(I) licenses under the Texas Radiation Control Act; and

(J) other environmental permits;

(8) Supplementary technical report. A supplementary technical report shall be submitted in connection with an application. The report shall be prepared either by a Texas registered professional engineer, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report shall include the following:

(A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;

(B) for each outfall, injection well, place of deposit, or place of disposal:

(i) the volume and rate of disposal of the defined waste or of fluid injection, including appropriate averages, the maximum rates of disposal or injection over representative periods of time, and detailed information regarding patterns of disposal or injection; and

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(ii) the physical characteristics of the defined waste or fluid; the chemical, biological, bacteriological, or other characteristics or characteristics described in enough detail to show the water and environmental considerations involved;

(C) such other information as may be required by the executive director to obtain adequate understanding, and which is necessary for the commission to make an adequate determination of the considerations relevant to the title (relating to Class I title (relating to Class II title (relating to Additional Contents Discharge Permits), Section E of this title (relating to Waste Permit Process).

(b) Only one application for a permit for a geographical location is required, regardless of whether the waste is disposed of or discharged at more than one other place of disposal.

(c) An application for a permit shall include the applicable subchapter c.

Source: The provisions of June 19, 1986, 11 TexReg 259 1996, 21 TexReg 4999; amended 1996, 21 TexReg 4583.

§ 305.47. Retention

A permittee shall keep a copy of the permit, of data, and of the application and any supporting information.

Source: The provisions of June 19, 1986, 11 TexReg 259 1996, 21 TexReg 4999; amended 1996, 21 TexReg 4583.

§ 305.48. Addition of Waste

(a) The following shall apply to the addition of waste to a wastewater treatment system:

- (1) The original application shall be submitted by or approved by the permittee, and shall be accompanied by a technical supplement.
- (2) If the application is for the addition of waste to a wastewater treatment system, the permittee shall submit a technical supplement to the application.

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(ii) the physical and chemical properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radioactive properties or characteristics, as applicable, described in enough detail to allow evaluation of the water and environmental quality considerations involved;

(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit), §305.48 of this title (relating to Additional Contents of Applications for Waste Discharge Permits), and Chapter 330, Subchapter E of this title (relating to Municipal Solid Waste Permit Procedures).

(b) Only one application needs to be filed for each geographical location in which waste is or will be disposed of or discharged from, even though there may be more than one outfall, place of deposit, or other place of disposal covered in the application.

(c) An application for a radioactive material license shall include the information specified in the applicable subchapter of Chapter 336 of this title.

Source: The provisions of this §305.45 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective June 13, 1996, 21 TexReg 4999; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.47. Retention of Application Data

A permittee shall keep records, throughout the term of the permit, of data used to complete the final application and any supplemental information.

Source: The provisions of this §305.47 adopted to be effective June 19, 1986, 11 TexReg 2593.

§ 305.48. Additional Contents for Applications for Wastewater Discharge Permits

(a) The following shall be included in an application for a wastewater discharge permit.

(1) The original and one copy of the permit application shall be submitted on forms provided by or approved by the executive director, and shall be accompanied by a like number of copies of all technical supplements and attachments.

(2) If the application is for the disposal of any

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waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information. This subsection does not apply to:

(A) an application to renew a permit; and

(B) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(3) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes, including, but not limited to, the following:

(A) the operator's name, address, and telephone number;

(B) whether the facility is located on Indian lands;

(C) up to four standard industrial codes (SIC) which best reflect the principal products or services provided by the facility.

(b) The following regulations contained in 40 Code of Federal Regulations, Part 122, which are in effect as of the date of TPDES program authorization, as amended, are adopted by reference.

(1) Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(g), providing application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

(2) Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(h), providing application requirements for manufacturing, commercial, mining, and silvicultural facilities which discharge only nonprocess wastewater, except 40 Code of Federal Regulations §122.21(h)(4)(iii), the requirements of which are addressed in §305.126(e) of this title (relating to Additional Standards Permit Conditions for Waste Discharge Permits).

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(3) Subpart B—Permit Applications and Special NPDES Program Requirements, §122.21(i), providing application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

(c) In addition to the information required by §305.45 of this title (relating to Content of Application for Permit), an application by an individual for a waste discharge permit shall contain:

- (1) the individual's full legal name and date of birth;
- (2) the street address of the individual's place of residence;
- (3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;
- (4) the individual's sex; and
- (5) any assumed business or professional name of the individual filed under Business and Commerce Code, Chapter 36.

Source: The provisions of this §305.48 adopted to be effective September 19, 1986, 11 TexReg 2593; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective January 7, 1994, 18 TexReg 9936; amended to be effective June 17, 1999, 24 TexReg 4441

§ 305.49. Additional Contents of Application for an Injection Well Permit

(a) The following shall be included in an application for an injection well permit:

- (1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

- (2) for Class III wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.122 of this title (relating to Class III Wells);

(3) the manner in which compliance with the financial responsibility requirement of §305.153 of this title (relating to Financial Responsibility) will be attained;

- (4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Plugging and Abandonment Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;

- (6) the manner in which compliance with the

post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(9) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in the Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

- (1) mine plan;
- (2) a restoration table;
- (3) a baseline water quality table;
- (4) control parameter upper limits;
- (5) monitor well locations; and

(6) other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(4)(B) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

Source: The provisions of this §305.49 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective January 5, 1988, 12 TexReg 4860; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective November 7, 1991, 16 TexReg 6051.

§ 305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit

Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

- (1) One original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, includ-

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ing the qualification. Also to be submitted is a statement of solid waste storage. The information provided must be detailed and complete enough to enable the agency to ascertain whether the facility is properly constructed and operated in accordance with the pertinent state and federal laws, rules, and regulations for solid waste storage. The statement must include a listing of sites owned or controlled by the applicant in the county covered by this subsection, together with a description of the "applicant." The description must include the name of the owner, operator, or association and the name of the person in charge of each officer and the name of the person in charge of the corporate site. The statement must also include a listing of the owner controls at each site, whether the owner is the applicant and/or the owner is not the applicant and a description of the facility which operates at each site.

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(4) An application for a permit to dispose of hazardous waste shall comply with the following requirements:

(A) In the case of a facility that is required to store, process, or dispose of hazardous waste under the application of RCRA, the information required by the Regulations (CFR 300.61) for a closure cost estimate shall be submitted in accordance with 40 CFR 300.61(b), and (c), and the Cost Estimate for

(B) An applicant, in the course of the application process, or dispose of the facility, shall certify to the director that the facility does not use public financial resources in a manner that is prohibited by this act, and in a manner that is not in compliance with all applicable rules and regulations. The applicant shall also certify to, how an applicant shall ensure that the facility is properly maintained for construction and operation of the facility properly maintained to satisfy the requirements of this act.

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Requirements for an Application for a Permit to Store, Process, or Dispose of Hazardous or Incombustible Solid Waste

Application for a permit to store, process, or dispose of solid waste shall contain the following information:

copies of the permit application on forms provided by the director and shall include a number of originals and copies.

plans for the construction of the facility and the staffing to be submitted, including

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ing the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the state of Texas. For purposes of this subsection, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13-270.26, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), (4), (b), and (c), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Financial information submitted to satisfy this subparagraph shall meet the

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requirements of subparagraphs (C) or (D) of this paragraph.

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure care, and liability coverage in accordance with Title 40, Code of Federal Regulations, Part 264, Subpart H, as adopted by reference under §335.152(a)(6) of this title (relating to Standards);

(ii) a certified copy of the resolution; and

(iii) certification by the governing body of passage of the resolution.

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph shall include the applicable items listed under clauses (i)-(vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure care, and liability coverage in accordance with Title 40, Code of Federal Regulations, Part 264, Subpart H, as adopted

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by reference under §335.152(a)(6) of this title (relating to Standards);

(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:

(I) audited financial statements for the previous two years; and

(II) the most current quarterly financial statement prepared according to generally accepted accounting principles;

(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:

(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service";

(II) financial statements for the previous two years; and

(III) additionally, an audited financial statement for the most recent fiscal year;

(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;

(v) for privately held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following:

(I) descriptions of the business and its operations;

(II) identification of any affiliated relationships;

(III) credit agreements and terms;

(IV) any legal proceedings involving the applicant;

(V) contingent liabilities; and

(VI) significant accounting policies;

(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;

(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i)-(v) of this sub-

paragraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.

(E) If any of the information required to be disclosed under subparagraph (D) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(F) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the

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facility, together previously demonstrated the United States Agency, that:

(i) the fault movement within the facility experienced at the time; that no portion of the portion of the treatment, storage and disposal wastes will be

(ii) the fault instability of the groundwater there is endan environment.

(G) At any time requirements of chapter F of the Standards for Operations Waste Storage Facilities), the executor or operator of waste management of his application specified in owner or operator period of time to submit the information new hazardous waste be submitted at construction or commence.

(5) An applicant landfill which is filed include an engineering benefits, if any, assess the landfill above site, the costs as construction, and any, which would grade construction

(6) An applicant landfill, land treatment which is filed to be located in the regional aquifer report documenting the regional aquifer the waste contain

(7) Engineering submitted as part of prepared and sealed

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facility, together with a demonstration, unless
previously demonstrated to the commission or
the United States Environmental Protection
Agency, that:

(i) the fault has not experienced displace-
ment within Holocene time, or if faults have
experienced displacement within Holocene
time, that no such faults pass within 200 feet
of the portion of the surface facility where
treatment, storage, or disposal of hazardous
wastes will be conducted; and

(ii) the fault will not result in structural
instability of the surface facility or provide for
groundwater movement to the extent that
there is endangerment to human health or the
environment.

(G) At any time after the effective date of the
requirements contained in Chapter 335, Sub-
chapter F of this title (relating to Permitting
Standards for Owners and Operators of Hazard-
ous Waste Storage, Processing, or Disposal Fa-
cilities), the executive director may require the
owner or operator of an existing hazardous
waste management facility to submit that por-
tion of his application containing the informa-
tion specified in 40 CFR §§270.14-270.26. Any
owner or operator shall be allowed a reasonable
period of time from the date of the request to
submit the information. An application for a
new hazardous waste management facility must
be submitted at least 180 days before physical
construction of the facility is expected to
commence.

(5) An application for a new hazardous waste
landfill which is filed after January 1, 1986, must
include an engineering report which evaluates the
benefits, if any, associated with the construction of
the landfill above existing grade at the proposed
site, the costs associated with the above-grade
construction, and the potential adverse effects, if
any, which would be associated with the above-
grade construction.

(6) An application for a new hazardous waste
landfill, land treatment facility, or surface impound-
ment which is filed after January 1, 1986, which is
to be located in the apparent recharge zone of a
regional aquifer must include a hydrogeologic
report documenting the potential effects, if any, on
the regional aquifer in the event of a release from
the waste containment system.

(7) Engineering plans and specifications sub-
mitted as part of the permit application shall be
prepared and sealed by a registered professional

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engineer who is currently registered as required
by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit
application submitted by an owner or operator of
a facility that stores, processes, or disposes of
hazardous waste in a surface impoundment or a
landfill must be accompanied by information,
reasonably ascertainable by the owner or opera-
tor, on the potential for the public to be exposed to
hazardous wastes or hazardous constituents
through releases related to the unit. By August 8,
1985, owners and operators of a landfill or a
surface impoundment who have already submit-
ted a Part B application must submit the exposure
information required by this paragraph. At a mini-
mum, such information must address:

(A) reasonably foreseeable potential releases
from both normal operations and accidents at
the unit, including releases associated with trans-
portation to or from the unit;

(B) the potential pathways of human expo-
sure to hazardous wastes or constituents result-
ing from documented releases; and

(C) the potential magnitude and nature of the
human exposure resulting from such a release.

(9) In the case of an application for a permit to
store, process, or dispose of hazardous waste at a
new hazardous waste management facility, or an
application for amendment or modification of a
solid waste management facility permit to provide
for capacity expansion, the application shall also
identify the nature of any known specific and
potential sources, types, and volumes of waste to
be stored, processed, or disposed of by the facility
and shall identify any other related information
the executive director may require.

(10) In the case of an application for a permit to
store, process, or dispose of hazardous waste at a
new hazardous waste management facility, the
application shall also contain the following:

(A) copies of any relevant land use plans,
adopted pursuant to the Texas Local Govern-
ment Code, Chapter 211 (Vernon's Supplement
1991), which were in existence before publica-
tion of the notice of intent to file a solid waste
permit application or, if no notice of intent is
filed, at the time the permit application is filed;

(B) identification of the names and locations
of industrial and other waste-generating facili-
ties within 1/2 mile of the facility in the case of
an application for a permit for a new on-site
hazardous waste management facility, and within
one mile of the facility in the case of an appli-

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cation for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(F) of this section.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles travelling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles travelling to and from the facility within a minimum radius of 2 1/2 miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 1/2 mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant

may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways. Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste; in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane:

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders:

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Natural Resource Conservation Commission, Texas Parks and

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(I) long-term mental and physical damages foreseeable; and

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(D) if an applicant has its own facilities, the applicant must have sufficient emergency response equipment on hand pursuant to §335.18 (Emergency Response Commercial Hazards Facilities), the applicant must have the facility available at all times.

(i) documents the county and the facility is located in the county; agreements with the county, mutual assistance, private entity, and other entities; and regular emergency and

(ii) demonstrate a mechanism for the use of the instrument, such as a trust, to be paid in trust to the municipality with the limitation that the funds be used for emergency equipment and for the benefit of the municipality.

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Wildlife, General Land Office, Texas Depart-
ment of Health, and Texas Railroad Com-
mission);

(X) a showing of coordination with the
local emergency planning committee and
any local comprehensive emergency man-
agement plan; and

(XI) any medical response capability
which may be available on the facility prop-
erty; or

(ii) the applicant has secured bonding of
sufficient financial assurance to fund the emer-
gency response personnel and equipment de-
termined to be necessary by the executive
director to manage a reasonable worst-case
emergency condition associated with the fa-
cility; such financial assurance may be dem-
onstrated by providing information which may
include, but is not limited to, the following:

(I) long-term studies using an environ-
mental model which provide the amount of
damages for which the facility is respon-
sible; and

(II) costs involved in supplying any of the
information included in or satisfying any of
the requirements of clause (i)(I)-(XI) of this
subparagraph;

(D) if an applicant does not elect to provide
its own facilities or secure bonding to ensure
sufficient emergency response capabilities pur-
suant to §335.183 of this title (relating to Emer-
gency Response Capabilities Required for New
Commercial Hazardous Waste Management Fa-
cilities); the applicant must provide prior to the
time the facility first receives waste:

(i) documentation showing agreements with
the county and/or municipality in which the
facility is located, or documentation showing
agreements with an adjoining county, municip-
ality, mutual aid association, or other appro-
priate entity such as professional organiza-
tions regularly doing business in the area of
emergency and/or disaster response; or

(ii) demonstration that a financial assur-
ance mechanism in the form of a negotiable
instrument, such as a letter of credit, fully
paid in trust fund, or an insurance policy,
with the limitation that the funds can only be
used for emergency response personnel and
equipment and made payable to and for the
benefit of the county government and/or mun-
icipal government in the county in which the

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facility is located or proposed to be located;
and

(E) a written statement signed by an autho-
rized signatory in accordance with §305.44(a)
of this title (relating to Signatories to Applica-
tions) explaining how the applicant intends to
provide emergency response financial assur-
ance to meet the requirements of subpara-
graphs (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience
in hazardous waste management and in particu-
lar the hazardous waste management technol-
ogy proposed for the application location, and,
for any applicant without experience in the
particular hazardous waste management tech-
nology, a conspicuous statement of that lack of
experience.

(13) An application for a boiler or industrial
furnace burning hazardous waste at a facility at
which the owner or operator uses direct transfer
operations to feed hazardous waste from trans-
port vehicles (containers, as defined in Title 40,
CFR §266.11) directly to the boiler or industrial
furnace shall submit information supporting con-
formance with the standards for direct transfer
provided by 40 CFR §266.111 and §335.225 of this
title (relating to Additional Standards for Direct
Transfer).

(14) The executive director may require a per-
mittee or an applicant to submit information in
order to establish permit conditions under §305.
127(4)(A) and (1)(B)(iii) of this title (relating
to Conditions To Be Determined for Individual
Permits).

Source: The provisions of this §305.50 adopted to be effective
June 19, 1986, 11 TexReg 2593; amended to be effective July 14,
1987, 12 TexReg 2102; amended to be effective January 5, 1988, 12
TexReg 4861; amended to be effective August 4, 1989, 14 TexReg
3531; amended to be effective October 8, 1990, 15 TexReg 5492;
amended to be effective November 7, 1991, 16 TexReg 6051;
amended to be effective July 29, 1992, 17 TexReg 5016; amended to
be effective November 23, 1993, 18 TexReg 8215; amended to be
effective May 11, 1994, 19 TexReg 3250; amended to be effective
November 20, 1996, 21 TexReg 10982; amended to be effective May
20, 1999, 24 TexReg 3725

§ 305.51. Revision of Applications for Hazard- ous Waste Permits

(a) Owners or operators of hazardous waste man-
agement facilities, who qualify for interim status
pursuant to 40 Code of Federal Regulation Part 270,
Subpart G, who have continuing authority to store,
process, and/or dispose of hazardous waste pursu-
ant to Chapter 335 of this title (relating to Industrial
Solid Waste and Municipal Hazardous Waste), and
who filed a Part A permit application pursuant to 40

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Code of Federal Regulations §270.10 shall file a revised Part A application with the executive director for any of the following changes during interim status:

(1) new hazardous wastes not identified in the original application are stored, processed or disposed of at the facility;

(2) increases in the design capacity of processes used at the facility occur;

(3) changes in the processes for management of the waste occur or additional processes are added;

(4) changes in the ownership or operational control of a facility are made; or

(5) newly regulated units for the storage, processing, or disposal of hazardous waste are added.

(b) The purpose of this section is to delineate requirements for filing a revised application, not to authorize any changes in facility operation. Changes in facility operations will be reviewed and approved by the executive director. In deciding whether to approve the proposed change, the executive director may consider the requirements set forth in 40 Code of Federal Regulations §270.72. For changes in the ownership or operational control of a facility, the new owner or operator shall submit a revised Part A permit application no later than 90 days prior to the scheduled change and shall also comply with the requirements set forth in 40 Code of Federal Regulations §270.72(d). A permit will be required for the operation of an above-grade landfill not described in a Part A application filed pursuant to §335.43 of this title (relating to Permit Required) prior to the effective date of this section.

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) changes made solely for the purposes of complying with the requirements of 40 Code of Federal Regulations (CFR) §265.193 for tanks and ancillary equipment;

(2) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of §3004(o) of the Re-

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source Conservation and Recovery Act (RCRA), as amended;

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been stored, processed, or disposed of at the facility prior to the effective date of the United States Environmental Protection Agency (EPA) regulation establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the EPA under §3008(h) of the RCRA, as amended, or other federal authority, by an authorized State under comparable state authority, or by a court in a judicial proceeding brought by the EPA or an authorized State, provided that such changes are limited to the storage, processing, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to store or process, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by 40 CFR, Part 268 or by §3004 of the RCRA, provided that such changes are made solely for the purpose of complying with 40 CFR, Part 268 or §3004 of the RCRA, as amended;

(7) addition of newly regulated units under subsection (a)(5) of this section; and

(8) changes necessary to comply with standards under 40 CFR Part 63, Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

Source: The provisions of this §305.51 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective July 29, 1992, 17 TexReg 5016; amended to be effective February 26, 1996, 21 TexReg 1137; amended to be effective December 5, 1999, 24 TexReg 10561

§ 305.52. Waste Containing Radioactive Materials

An application which involves the disposal of a waste containing radioactive materials shall be accompanied by a letter or other instrument in writing from the commission, the Texas Department of Health, or any other appropriate authority stating either that the applicant, or the person delivering the waste containing radioactive materials for disposal by the applicant, has a license from the commission, the Texas Department of Health, or any other appropriate authority governing waste con-

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taining radioactive material or the person served with such a license. This section applies to applications under Chapter 161, Radioactive Substances.

Source: The provisions of this section adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective July 29, 1992, 17 TexReg 5016; amended to be effective February 26, 1996, 21 TexReg 1137; amended to be effective December 5, 1999, 24 TexReg 10561

§ 305.53. Application

(a) Except for rules specifically provided for, the application shall include with each application:

(1) The permit fee, which shall be \$2,000 for a well which will not contain hazardous waste is \$2,000 which will be authorized for hazardous waste is \$2,000.

(2) The permit fee for waste management, storage, processing, or disposal of the Part B application shall be \$2,000 for a well which will not contain hazardous waste is \$2,000 and not more than \$2,000 for a well which will contain hazardous waste is \$2,000.

(A) site evaluation fee for a waste facility up to \$2,000 thereafter;

(B) process a waste facility up to \$2,000 thereafter;

(C) facility up to \$2,000 thereafter;

(D) management of a waste facility up to \$2,000 thereafter;

(3) For purposes of this subsection, each incinerator, waste management area shall be subject to the \$500 per storage tank or container in type and use with fee.

(4) The permit fee shall be \$295.131-295.14 (Use Permit Fees).

(5) The permit fee shall be \$329.9 of this title (Applications).

(6) The permit fee for disposal permits shall be not more than \$2,000 (A) Agriculture as follows:

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taining radioactive materials; or that the applicant or the person served by the applicant does not need such a license. This section does not apply to applications under Chapter 336 of this title (relating to Radioactive Substance Rules).

Source: The provisions of this §305.52 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.53. Application Fee

(a) Except for radioactive material licenses or as specifically provided hereunder, an applicant shall include with each application a fee of \$100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is \$25. The fee for each disposal well which will be authorized to receive hazardous waste is \$2,000.

(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than \$2,000 and not more than \$50,000 as calculated in accordance with the following:

(A) site evaluation—\$100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;

(B) process analysis—\$1,000;

(C) facility unit(s) analysis—\$500 per unit;

(D) management/facility analysis—\$500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the \$500 per unit fee; except that multiple storage tanks or container storage areas identical in type and use will be subject to a single \$500 unit fee.

(4) The permit application fee for water use permits shall be submitted in accordance with §§295.131-295.140 of this title (relating to Water Use Permit Fees).

(5) The permit application fee for mine shaft permits shall be submitted in accordance with §329.9 of this title (relating to Procedures for Applications).

(6) The permit application fees for wastewater disposal permits shall not be less than \$100 and not more than \$2,000 as follows.

(A) Agricultural permit applications fees are as follows:

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(i) minor amendments—\$100; and

(ii) new, amendment, and renewal applications—\$300.

(B) Domestic wastewater permit application fees are based upon the following flow categories:

(i) minor amendments—\$100;

(ii) new, amendment, and renewal applications less than 50,000 gallons per day—\$300;

(iii) new, amendment, and renewal applications 50,000 to less than 100,000 gallons per day—\$500;

(iv) new, amendment, and renewal applications 100,000 to less than 250,000 gallons per day—\$800;

(v) new, amendment, and renewal applications 250,000 to less than 500,000 gallons per day—\$1,200;

(vi) new, amendment, and renewal applications 500,000 to less than 1 million gallons per day—\$1,600; and

(vii) new, amendment, and renewal applications 1 million and greater gallons per day—\$2,000.

(C) Municipal stormwater permit application fees as follows:

(i) minor amendments—\$100; and

(ii) new, major amendments, and renewal applications—\$2,000.

(D) Industrial wastewater permit application fees are based upon the EPA major/minor designation and the commission assigned toxicity rating as follows:

(i) minor amendments for minor facilities—\$100;

(ii) minor amendments for major facilities—\$400;

(iii) new, amendment, and renewal applications for minor facilities that are not subject to categorical standards promulgated by EPA (40 Code of Federal Regulations, Part 400)—\$300;

(iv) new, amendment, and renewal applications for minor facilities that must comply with a categorical standard promulgated by the EPA (40 Code of Federal Regulations, Part 400)—\$1,200; and

(v) new, amendment, and renewal applications for major facilities—\$2,000.

(7) The fees established by this section are due

30 TAC § 305.53

at the time that the application is filed in accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas Natural Resource Conservation Commission for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees pursuant to paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application for a new, amended, or modified permit a fee of \$50 to be applied toward the cost of providing required notice. A fee of \$15 is required with each application for renewal. This subsection does not apply to radioactive material licenses.

(c) Each application for a radioactive material license shall be accompanied by the applicable fee. The fee for a license shall be calculated in accordance with Chapter 336, Subchapter B of this title (relating to Radioactive Substance Fees).

Source: The provisions of this §305.53 adopted to be effective June 19, 1986, 11 TexReg 2593; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective March 10, 1994, 19 TexReg 1376; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.54. Additional Requirements for Radioactive Material Licenses

(a) An applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the executive director. References shall be specifically stated, and shall incorporate accurate, legible, and up-to-date information.

(b) An application for a license shall contain proposed written specifications relating to the operations of the facility and any disposition of radioactive material.

(c) If the applicant is a corporation under the Texas Business Corporation Act, written verification (either affidavit or tax receipt) shall be submitted with the application to confirm that no tax owed the State under Chapter 171, Tax Code, is delinquent.

(d) An application shall include information on ownership of the land on which the proposed project will be located, ownership of the proposed facilities, buildings, structures, and equipment, and ownership of properties adjacent to the proposed site.

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Source: The provisions of this §305.54 adopted to be effective June 5, 1997, 22 TexReg 4583; amended to be effective September 3, 1998, 23 TexReg 8837.

**SUBCHAPTER D. AMENDMENTS,
RENEWALS, TRANSFERS, CORRECTIONS,
REVOCATION, AND SUSPENSION OF
PERMITS**

§ 305.61. Applicability

The provisions of this subchapter set forth the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of permits.

Source: The provisions of this §305.61 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective October 29, 1990, 15 TexReg 6015.

§ 305.62. Amendment

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and

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(1) A major amendment changes a substantial part of the instrument, or a limiting

(2) A minor amendment to improve or maintain the method of disposal, if there is neither a significant quantity of waste or fluid nor a material change in the discharge of injectants, includes any other change in this chapter that would not be a standard or criterion of the deterioration of quality of the minor amendment is limited to:

(A) except for the National System (interim compliance, provided 120 days after the permit and does the final compliance

(B) except for frequent monitoring of the permittee.

(3) Minor modifications. The executive director may permit to make corrections in the permitted activity (see also §50.45 on conditions to Permits)). Minor modification allowing to Apply for Application Permit, including Sewage Sludge or minor modifications

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manner and under the procedures specified in §§305.41-305.53 of this title (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such

30 TAC § 305.62

change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to consti-

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tute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions To Be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

(i) Amendment of radioactive material license. An application for amendment of a radioactive material license shall be filed with the executive director in accordance with Chapter 336 of this title (relating to Radioactive Substance Rules). An application for amendment shall specify how the license is to be amended and the basis for such amendment.

Source: The provisions of this §305.62 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14,

1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3513; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 13, 1996, 21 TexReg 4999; amended to be effective February 11, 1997, 22 TexReg 1169; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective June 17, 1999, 24 TexReg 4441

§ 305.63. Renewal

(a) Any permit renewal application that is declared administratively complete before September 1, 1999 is subject to this section. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) An application for renewal may be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment or modification shall also be filed before further action is taken. For applications filed under the Texas Water Code, Chapter 26, if an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for renewal.

(4) If renewal procedures have been initiated before the permit expiration date, the existing permit will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in § 305.66 of this title (relating to Revocation and Suspension).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by § 305.65 of this title (relating to Corrections of Permits), or § 305.62(d) of this title (relating to Amendment) provided the requirements of § 305.62(f) of this title (relating to Amendment) and § 305.96 of this title (relating to

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Action on Application

(7) The executive action for permittees shall be taken by the executive director. The executive director shall submit the application to the commission for review. The commission shall act on the application within 40 days of the permit expiration date after the permit expires.

(b) This section does not apply to the renewal of radioactive material license under 336 of this title (relating to Radioactive Substance Rules).

Source: The provisions of this § 305.63 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective June 13, 1996, 21 TexReg 4999; amended to be effective February 11, 1997, 22 TexReg 1169; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective June 17, 1999, 24 TexReg 4441

§ 305.64. Transfer

(a) A permit is issued only upon application. No transfer is required for a permit as long as the secret change in name alone does not constitute a transfer. A transfer is not effective until approved by the executive director.

(b) Except as provided in this section, either the permittee or the executive director shall submit to the commission for review at least 40 days before the transfer date. The application shall be in the following form:

(1) name and address

(2) date of proposed transfer

(3) if the permit is for a radioactive material license, the method by which the permittee intends to assume responsibility, including proof of ability to become effective;

(4) a fee of \$100 for processing of the application under 53(a) of this title (relating to Fees)

(5) a sworn statement made with the full knowledge of the permittee if the transfer is for a radioactive material license and

(6) any other information that the executive director may reasonably require.

(c) If no agreement is reached between the permittee and the executive director for compliance with the permit and liability therewith is assumed

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effective July 17, 1988, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective September 23, 1999, 24 TexReg 8309

application that is due before September 1, 1999. The permittee shall file an application for renewal of the permit at least 180 days before the effective permit date has been granted by the executive director or applications to be renewed may be in the form of the original permit

renewal may be in the form of the original permit

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renewal in fact requests requirements and conditions of the permit for amendment or modification of the permit shall be filed for renewal.

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deny an application set forth in § 305.66 of this title (relating to Denial and Suspension). In the process, the executive director may add or additions to the requirements of § 305.65 of this title (relating to Denial and Suspension) or § 305.62(d) of this title (relating to Denial and Suspension) provided the application is filed in accordance with this title (relating to Denial and Suspension)

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Action on Application for Amendment) are satisfied.

(7) The executive director may grant permission for permittees of non-publicly owned treatment works to submit the information required by 40 Code of Federal Regulations § 122.21(g)(10) after the permit expiration date.

(b) This section does not apply to applications for renewal of radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

Source: The provisions of this §305.63 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective June 5, 1997, 22 TexReg 4583; amended to be effective September 23, 1999, 24 TexReg 8309

§ 305.64. Transfer of Permits

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1) name and address of the transferee;

(2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

(4) a fee of \$100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fees);

(5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and

(6) any other information the executive director may reasonably require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on

30 TAC § 305.64

the date of the approved transfer. This section is not intended to relieve a transfer or of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361, changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of 40 Code of Federal Regulations (CFR) Part 264, Subpart H, as adopted by reference in §335.152(a)(6) of this title (relating to Standards), until the new owner or operator has demonstrated to the executive director that he is complying with the requirements of 40 CFR Part 264, Subpart H. The new owner or operator must demonstrate compliance with 40 CFR Part 264, Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with 40 CFR Part 264, Subpart H, the executive director shall notify the old owner or operator that he no longer needs to comply with 40 CFR Part 264, Subpart H as of the date of demonstration.

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

30 TAC § 305.64

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TexReg 3297; amended to be effective October 29, 1990, 15 TexReg 6015.

§ 305.65. Renewal *New*

(a) Any permit renewal application that is declared administratively complete on or after September 1, 1999 is subject to this section. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) An application for renewal may be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment or modification shall also be filed before further action is taken. For applications filed under the Texas Water Code, Chapter 26, if an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for renewal.

(4) If renewal procedures have been initiated before the permit expiration date, the existing permit will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Revocation and Suspension).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by §50.145 of this title (relating to Corrections of Permits), or §305.62(d) of this title (relating to Amendment) provided the requirements of §305.62(f) of this title and §305.96 of this title (relating to Action on Application for Amendment) are satisfied.

(7) The executive director may grant permission for permittees of non-publicly owned treatment works to submit the information required by

(1) the permittee no longer owns the permitted facilities;

(2) the permittee is about to abandon or cease operation of the facilities;

(3) the permittee has abandoned or ceased operating the facilities; and

(4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

(1) the permittee no longer owns or controls the permitted facilities;

(2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;

(3) the permittee has failed or is failing to comply with the terms and conditions of the permit;

(4) the permitted facilities have been or are about to be abandoned;

(5) the permittee has violated commission rules or orders;

(6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

(8) transfer of the permit would maintain the quality of waste in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

Source: The provisions of this §305.64 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 19, 1989, 14

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40. Code of Federal Regulations, after the permit expires.

(8) After complying with Chapters 39, 50, and 51, without provision for a contested case hearing, renew a permit for:

(A) storage of hazardous waste tanks, or other containers;

(i) was generated;

(ii) does not pose a threat to other waste treatment, storage, and disposal units;

(B) processing;

(i) the waste;

(ii) the waste is not derived from other waste treatment, storage, and disposal units;

(iii) the processing is not prohibited by the permit.

(9) If the commission finds that the permittee's compliance with the permit raises an issue of the permittee's ability to comply with the permit, the commission may request a contested case hearing.

(b) This section does not apply to the renewal of radioactive materials (see Title 336 of this title (relating to Substances Rules)).

Source: The provisions of this section adopted to be effective September 23, 1999, 24 TexReg 6015.

§ 305.66. Permit Revocation and Suspension

(a) A permit or order issued by the commission does not become void if it is suspended or revoked by the commission. If an order of the commission is given, the permit is not limited to, the following:

(1) the permittee does not comply with the commission order, during the life of the permit, or the permit does not conform with the permit;

(2) the permittee has abandoned the permit;

(3) the permittee has failed to comply with the permit;

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40 Code of Federal Regulations §122.21(g)(10) after the permit expiration date.

(8) After complying with all applicable rules in Chapters 39, 50, and 55 of this title, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(A) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(i) was generated on-site; and

(ii) does not include waste generated from other waste transported to the site; or

(B) processing of hazardous waste if:

(i) the waste was generated on-site;

(ii) the waste does not include waste generated from other waste transported to the site; and

(iii) the processing does not include thermal processing.

(9) If the commission determines that an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

(b) This section does not apply to applications for renewal of radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

Source: The provisions of this §305.65 adopted to be effective September 23, 1999, 24 TexReg 8309

§ 305.66. Permit Denial, Suspension, and Revocation

(a) A permit or other order of the commission does not become a vested right and may be suspended or revoked for good cause at any time by order of the commission after opportunity for a public hearing is given. Good cause includes, but is not limited to, the following:

(1) the permittee has failed or is failing to comply with the conditions of the permit or a commission order, including failure to construct, during the life of the permit, facilities necessary to conform with the terms and conditions of the permit;

(2) the permit or the operations thereunder have been abandoned;

(3) the permit or other order is no longer needed by the permittee;

(4) the permittee's failure in the application or

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hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time;

(5) a determination that the permitted activity endangers human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm;

(6) the facility is being operated by a transferee before commission approval of the transfer;

(7) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed;

(8) for Class III injection wells, failure to achieve satisfactory restoration progress;

(9) for radioactive material licenses, any violation of the Texas Radiation Control Act or Chapter 336 of this title (relating to Radioactive Substance Rules), or when conditions are revealed by an application, statement of fact, report, record, inspection, or other means, which would have warranted the commission's refusal to issue a license on an original application; or

(10) such other cause sufficient to warrant termination or suspension of the authorization.

(b) The authority to discharge waste into or adjacent to the water in the state under a waste discharge permit is subject to cancellation or suspension under the Texas Water Code, §26.084.

(c) The commission may, for good cause, deny, amend, revoke, or suspend, after notice and hearing according to §305.68 of this title (relating to Action and Notice on Petition for Revocation and Suspension), any permit it issues or has authority to issue for a solid waste storage, processing, or disposal facility, for good cause, for reasons pertaining to public health, air or water pollution, land use, or for violations of the Texas Solid Waste Disposal Act, or any other applicable laws or rules controlling the management of solid waste.

(d) When the executive director determines revocation or suspension proceedings are warranted, a petition requesting appropriate action may be filed by the executive director with the commission. A person affected by the issuance of a permit or other order of the commission may initiate proceedings for revocation or suspension by forwarding a petition to the executive director to be filed with the commission.

(e) If the executive director or an affected person intends to file a petition to revoke or suspend a

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permit, notice of the intention and a copy of the petition to be filed shall be personally served on or sent by registered or certified mail to the permittee at the last address of record with the commission. This notice shall be given at least 15 days before a petition for revocation or suspension is submitted to the executive director or filed with the commission for further proceedings. Failure to provide such notice shall not be jurisdictional. [For radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules), only the executive director may file a petition to revoke or suspend a license.]

(f) The commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if the commission finds after notice and hearing, that:

(1) the permit holder has a record of environmental violations in the preceding five years at the permitted site;

(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant;

(3) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(4) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by a rule of the commission;

(5) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(g) Before denying, suspending, or revoking a permit under this section, the commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by Title 5, Sanitation and Environmental Quality, of the Texas Health and Safety Code (Vernon 1991) or by rule of the commission.

(h) The commission may not suspend a new commercial hazardous waste management permit on

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the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title (relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility).

(i) For applications for new hazardous waste management facility permits, the commission may deny such an application if it determines that the facility is not compatible with local land use pursuant to §335.180 of this title (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use).

(j) For applications for new commercial hazardous waste management facility permits, the commission may not deny such an application on the basis of a failure of a county or a municipality to accept the funds and make the roadway improvements pursuant to §335.182 of this title (relating to Burden on Public Roadways by a New Commercial Hazardous Waste Management Facility).

(k) For applications for any new commercial hazardous waste management facility permits, the commission shall not grant such an application if the applicant is without experience in the particular hazardous waste management technology and has not conspicuously stated that lack of experience in the application, and the commission shall not grant such an application unless the applicant provides a summary of its experience, pursuant to §305.50(12)(D) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit). The commission may not deny an application for a new commercial hazardous waste management facility permit solely on the basis of lack of experience of the applicant.

(l) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

Source: The provisions of this §305.66 adopted to be effective June 19, 1986, 11 TexReg 2594; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective November 7, 1991, 16 TexReg 6051; amended to be effective June 5, 1997, 22 TexReg 4583.

§ 305.67. Revocation and Suspension upon Request or Consent

(a) If a permittee no longer desires to continue a waste disposal activity or to dispose of waste under

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a permit, or is agreeal zation to do so for a permittee should file written request or a v later than 10 days foll intention to file a peti (relating to Revocatio

(b) If a permittee revocation or suspens director may revoke c the necessity of a p action. The executive mission of each such

Source: The provisions c June 19, 1986, 11 TexReg 2

§ 305.68. Action Rev

(a) In the absence c tee or of sufficient co sion shall conduct a j revoke or suspend a commission, notice c permittee not less tha by certified mail, ret time and place of the involving hazardous Waste Disposal Act, 4477-7, public notice by mail and by radio §§ 305.102-305.104 o Publication; Notice b

(b) If the permitte revocation or suspen executive director has permit, the commissi meeting of the comm hearing, provided no first-class mail at leas For permits involvin Texas Solid Waste Dis Article 4477-7, notice by first-class mail a meeting.

Source: The provisions June 19, 1986, 11 TexReg 1987, 12 TexReg 2102.

§ 305.69. Solid the

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a permit, or is agreeable to a suspension of authori-
zation to do so for a specified period of time, the
permittee should file with the executive director a
written request or a written consent and waiver not
later than 10 days following receipt of notice of the
intention to file a petition under §305.66 of this title
(relating to Revocation and Suspension) .

(b) If a permittee requests or consents to the
revocation or suspension of the permit, the executive
director may revoke or suspend the permit without
the necessity of a public hearing or commission
action. The executive director shall notify the com-
mission of each such revocation or suspension.

Source: The provisions of this §305.67 adopted to be effective
June 19, 1986, 11 TexReg 2594.

§ 305.68. Action and Notice on Petition for Revocation or Suspension

(a) In the absence of a request filed by the permit-
tee or of sufficient consent and waiver, the commis-
sion shall conduct a public hearing on a petition to
revoke or suspend a permit or other order of the
commission, notice of which shall be given to the
permittee not less than 30 days prior to the hearing
by certified mail, return receipt requested, of the
time and place of the hearing. For permits or orders
involving hazardous waste under the Texas Solid
Waste Disposal Act, Texas Civil Statutes, Article
4477-7, public notice shall be given by publication,
by mail and by radio broadcast, in accordance with
§§ 305.102-305.104 of this title (relating to Notice by
Publication; Notice by Mail; and Radio Broadcasts).

(b) If the permittee requests or consents to the
revocation or suspension of the permit and the
executive director has not revoked or suspended the
permit, the commission may take action at a regular
meeting of the commission without holding a public
hearing, provided notice of the hearing is given by
first-class mail at least 10 days prior to the meeting.
For permits involving hazardous waste under the
Texas Solid Waste Disposal Act, Texas Civil Statutes,
Article 4477-7, notice of the hearing shall be given
by first-class mail at least 30 days prior to the
meeting.

Source: The provisions of this §305.68 adopted to be effective
June 19, 1986, 11 TexReg 2594; amended to be effective July 14,
1987, 12 TexReg 2102.

§ 305.69. Solid Waste Permit Modification at the Request of the Permittee

(a) This section applies only to modifications to
industrial and hazardous solid waste permits. Modi-
fications to municipal solid waste permits are cov-
ered in §305.70 of this title (relating to Municipal

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Solid Waste Class I Modifications).

(b) Class 1 modifications of solid waste permits.

(1) Except as provided in paragraph (2) of this
subsection, the permittee may put into effect Clas
1 modifications listed in Appendix I of this sub-
chapter under the following conditions:

(A) the permittee must notify the executive
director concerning the modification by certi-
fied mail or other means that establish proof of
delivery within seven calendar days after the
change is put into effect. This notification must
specify the changes being made to permit con-
ditions or supporting documents referenced by
the permit and must explain why they are
necessary. Along with the notification, the per-
mittee must provide the applicable information
in the form and manner specified in §1.5(d) of
this title (relating to Records of the Agency),
§§305.41-305.45 and 305.47- 305.53 of this title
(relating to Applicability; Application Required;
Who Applies; Signatories to Applications; Con-
tents of Application for Permit; Retention of
Application Data; Additional Contents of Appli-
cations for Wastewater Discharge Permits; Ad-
ditional Contents of Application for an Injection
Well Permit; Additional Requirements for an
Application for a Hazardous or Industrial Solid
Waste Permit; Revision of Applications for Haz-
ardous Waste Permits; Waste Containing Radio-
active Materials; and Application Fee), Subchap-
ter I of this chapter (relating to Hazardous
Waste Incinerator Permits), and Subchapter J of
this chapter (relating to Permits for Land Treat-
ment Demonstrations Using Field Tests or Labo-
ratory Analyses);

(B) the permittee must send notice of the
modification request by first-class mail to all
persons listed in §39.13 (relating to Mailed
Notice). This notification must be made within
90 calendar days after the change is put into
effect. For the Class 1 modifications that require
prior executive director approval, the notifica-
tion must be made within 90 calendar days after
the executive director approves the request; and

(C) any person may request the executive
director to review, and the executive director
may for cause reject, any Class 1 modification.
The executive director must inform the permit-
tee by certified mail that a Class 1 modification
has been rejected, explaining the reasons for the
rejection. If a Class 1 modification has been
rejected, the permittee must comply with the
original permit conditions.

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(2) Class 1 permit modifications identified in Appendix I by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41-305.45 and 305.47-305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the executive director evidence of

the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, subparagraphs (A), (B), (C), (D), or (E) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of

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(E) the execut permittee that t commission will the next 30 days.

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this section for Class 3 modifications for either
of the following reasons:

(i) there is significant public concern about
the proposed modification; or

(ii) the complex nature of the change re-
quires the more extensive procedures of a
Class 3 modification; or

(D) the commission must approve the modi-
fication request, with or without changes, as a
temporary authorization having a term of up to
180 days, in accordance with the following
public notice requirements:

(i) notice of a hearing on the temporary
authorization shall be given not later than the
20th day before the hearing on the authoriza-
tion; and

(ii) this notice of hearing shall provide that
an affected person may request an evidentiary
hearing on issuance of the temporary autho-
rization; or

(E) the executive director must notify the
permittee that the executive director or the
commission will decide on the request within
the next 30 days.

(7) If the executive director notifies the permit-
tee of a 30-day extension for a decision, then no
later than 120 days after receipt of the modifica-
tion request, subparagraphs (A), (B), (C), or (D) of
this paragraph must be met, subject to §50.33 of
this title (relating to Executive Director Action on
Application), as follows

(A) the executive director or the commission
must approve the modification request, with or
without changes, and modify the permit accord-
ingly;

(B) the commission must deny the request;

(C) the commission or the executive director
must determine that the modification request
must follow the procedures in subsection (d) of
this section for Class 3 modifications for either
of the following reasons:

(i) there is significant public concern about
the proposed modification;

(ii) the complex nature of the change re-
quires the more extensive procedures of a
Class 3 modification; or

(D) the commission must approve the modi-
fication request, with or without changes, as a
temporary authorization having a term of up to
180 days, in accordance with the following
public notice requirements:

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(i) notice of a hearing on the temporary
authorization shall be given not later than the
20th day before the hearing on the authoriza-
tion; and

(ii) this notice of hearing shall provide that
an affected person may request an evidentiary
hearing on issuance of the temporary
authorization.

(8) If the executive director or the commission
fails to make one of the decisions specified in
paragraph (7) of this subsection by the 120th day
after receipt of the modification request, the per-
mittee is automatically authorized to conduct the
activities described in the modification request for
up to 180 days, without formal agency action. The
authorized activities must be conducted as de-
scribed in the permit modification request and
must be in compliance with all appropriate stan-
dards of Chapter 335, Subchapter E of this title
(relating to Interim Standards for Owners and
Operators of Hazardous Waste Storage, Process-
ing, or Disposal Facilities). If the commission
approves, with or without changes, or denies any
modification request during the term of the tem-
porary authorization issued pursuant to para-
graph (6) or (7) of this subsection, such action
cancels the temporary authorization. The commis-
sion is the sole authority for approving or denying
the modification request during the term of the
temporary authorization. If the executive director
or the commission approves, with or without
changes, or if the commission denies the modi-
fication request during the term of the automatic
authorization provided for in this paragraph, such
action cancels the automatic authorization.

(9) In the case of an automatic authorization
under paragraph (8) of this subsection, or a tem-
porary authorization under paragraph (6)(D) or
(7)(D) of this subsection, if the executive director
or the commission has not made a final approval
or denial of the modification request by the date
50 days prior to the end of the temporary or
automatic authorization, the permittee must within
seven days of that time send a notification to all
persons listed in §39.13 of this title (relating to
Mailed Notice), and make a reasonable effort to
notify other persons who submitted written com-
ments on the modification request, that:

(A) the permittee has been authorized tempo-
rarily to conduct the activities described in the
permit modification request; and

(B) unless the executive director or the com-
mission acts to give final approval or denial of

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the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the executive director or the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendment) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the executive director or the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (f) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission or the executive director may change the terms of, and the commission may deny a Class 2 permit modification request under paragraphs (6)-(8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of Subchapter F, Chapter 335 of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41-305.45 and 305.47-305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses); and Subchapter Q of this chapter of this title (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 (relating to Mailed Notice)

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and must cause this major local newspaper notice must be mailed days before or after modification request and publication of the executive director the following:

(A) all information title (relating to I

(B) announcement period, and the name contact person to contact;

(C) announcement for a public meeting request, to be held (4) of this subsection

(D) name and permittee's contact person;

(E) name and contact person;

(F) identification of the modification documents can be

(G) the following compliance history being modified contact person."

(3) The permittee permit modification requests in a location vicinity of the permit

(4) The permittee no earlier than 15 days notice required in permit and no later than 1 60-day comment period held to the extent permitted facility.

(5) The public shall to comment on the comment period when the permittee publishes the Comments should contact person identified

(6) After the comment period, the permit granted or denied cable requirement (relating to Public

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and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the executive director. The notice shall include the following:

(A) all information required by §39.11 of this title (relating to Text of Mailed Notice;

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) identification of the location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of Chapter 39 of this title (relating to Public Notice), Chapter 50 of this title

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(relating to Action on Applications), and Chapter 55 of this title (relating to Request for Contested Case Hearing; Public Comment). When a permit is modified, only the conditions subject to modification are reopened.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of this subchapter, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may grant the permittee a temporary authorization having a term of up to 180 days, in accordance with this subsection, and in accor-

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dance with the following public notice requirements:

(A) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(B) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii)-(v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with the applicable standards of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) and 40 Code of Federal Regulations (CFR) Part 264.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §39.13 (relating to Mailed Notice). This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the applicable standards of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) and 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions), 40 CFR Part 268, or RCRA §3004;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §39.13 (relating to Mailed Notice) within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, the Government Code, Chapter 2002.

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(h) Newly regulated

(1) The permittee manage wastes listed under 40 CFR, Part hazardous waste in hazardous waste mana;

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(B) the permitt tion request on o waste or unit be quirements;

(C) the permitt with the applicat Subchapter E of Standards for Ow ous Waste Storag cilities), Chapter 1 through 4 (rela agement of Speci of Facilities), and

(D) the permit Class 2 or 3 mo days after the el listing or identify unit to RCRA S dards; and

(E) in the cas permittee certifi compliance with monitoring and f ments of Chapter (relating to Inter

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CONSOLIDATED PERMITS

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR, Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 335, Subchapter H, Divisions 1 through 4 (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to RCRA Subtitle C management standards; and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and

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Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and 40 CFR Part 265 on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Combustion facility changes to meet Title 40 Code of Federal Regulations (CFR) Part 63 Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of this subchapter:

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1211, as amended through June 19, 1998, at 63 FedReg 33782, before a permit modification can be requested under this section; and

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(j) Appendix I. The following appendix will be used for the purposes of Subchapter D which relates to industrial and hazardous solid waste permit modification at the request of the permittee.

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Modifications

Class

A. General Permit Provisions

1. Administrative and informational changes 1
2. Correction of typographical errors 1
3. Equipment replacement or upgrading with functionally equivalent components
(e.g., pipes, valves, pumps, conveyors, controls) 1
4. Changes in the frequency of or procedures for monitoring, reporting,
sampling, or maintenance activities by the permittee:
 - a. To provide for more frequent monitoring, reporting, sampling, or
maintenance 1
 - b. Other changes 2
5. Schedule of compliance
 - a. Changes in interim compliance dates, with prior approval of the
executive director 1¹
 - b. Extension of final compliance date 3
6. Changes in expiration date or permit to allow earlier permit expiration, with
prior approval of the executive director 1¹
7. Changes in ownership or operational control of a facility, provided the
procedures of §305.64(g) are followed 1¹
8. Six months or less extension of the construction period time limit applicable
to commercial hazardous waste management units pursuant to §305.149(b)(2)
or §305.149(b)(4) 2
9. Greater than six-month extension of the commercial hazardous waste
management unit construction period time limit pursuant to §305.149(b)(3) or
§305.149(b)(4) 3
10. Any extension pursuant to §305.149(b)(3) of a construction period time limit
for commercial hazardous waste management units which has been previously
authorized under §305.149(b)(2) 3

B. General Facility Standards

1. Changes to waste sampling or analysis methods:
 - a. To conform with agency guidance or regulations 1
 - b. To incorporate changes associated with F039 (multi-source leachate)
sampling or analysis methods 1¹
 - c. To incorporate changes associated with underlying hazardous

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constituents in ignitable or corrosive wastes 1¹
 d. Other changes 2

2. Changes to analytical quality assurance/control plan:

a. To conform with agency guidance or regulations 1
 b. Other changes 2

3. Changes in procedures for maintaining the operating record 1

4. Changes in frequency or content of inspection schedules 2

5. Changes in the training plan:

a. That affect the type or decrease the amount of training given to employees 2
 b. Other changes 1

6. Contingency plan:

a. Changes in emergency procedures (i.e., spill or release response procedures) 2
 b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed 1
 c. Removal of equipment from emergency equipment list 2
 d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan 1

7. Construction quality assurance plan:

a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specifications 1
 b. Other Changes 2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Groundwater Protection

1. Changes to wells:

a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system 2
 b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well 1

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2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director 1¹ d.
3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director 1¹ e.
4. Changes in point of compliance 2
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs): f.
- a. As specified in the groundwater protection standard 3
- b. As specified in the detection monitoring program 2
6. Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix 2
7. Compliance monitoring program:
- a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title (relating to Detection Monitoring Program), and §335.165 of this title (relating to Compliance Monitoring Program) 3
- b. Changes to a compliance monitoring program as required by §335.165(11) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix 2
8. Corrective action program:
- a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title (relating to Compliance Monitoring Program) and §335.166 of this title (relating to Corrective Action Program) 3
- b. Changes to a corrective action program as required by §335.166(8), unless otherwise specified in this appendix 2
- D. Closure
1. Changes to the closure plan:
- a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director 1¹
- b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director 1¹
- c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive
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tor 1 ¹	d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director	1 ¹
..... 2	e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix	2
..... 3	f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 CFR 264.113(d) and (e).	2
..... 2	2. Creation of a new landfill unit as part of closure	3
..... 2	3. Addition of the following new units to be used temporarily for closure activities:	
..... 3	a. Surface impoundments	3
..... 3	b. Incinerators	3
..... 3	c. Waste piles that do not comply with 40 CFR 264.250(c)	3
..... 3	d. Waste piles that comply with 40 CFR 264.250(c)	2
..... 3	e. Tanks or containers (other than specified below)	2
..... 2	f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director	1 ¹
..... 2	E. Post-Closure	
..... 3	1. Changes in name, address, or phone number of contact in post-closure plan	1
..... 2	2. Extension of post-closure care period	2
..... 3	3. Reduction in the post-closure care period	3
..... 2	4. Changes to the expected year of final closure, where other permit conditions are not changed	1
..... 2	5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure	2
..... 1 ¹	F. Containers	
..... 1 ¹	1. Modification or addition of container units:	
..... 1 ¹	a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below	3
..... 1 ¹	b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below	2
..... 1 ¹	c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the	

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greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1'

2. Modification of container units, as follows: *← added heading*

- a. Modification of a container unit without increasing the capacity of the unit 2
- b. Addition of a roof to a container unit without alteration of the containment system 1

3. Storage of different wastes in containers, except as provided in F(4) below: *"Sgt + W" app"*

- a. That require additional or different management practices from those authorized in the permit 3
- b. That do not require additional or different management practices from those authorized in the permit 2

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

- a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1'
- b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

5. Other changes in container management practices (e.g., aisle space, types of containers, segregation) 2

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1. Modification or addition of tank units or treatment processes, as follows:

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- a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below of this appendix 3
- b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below of this appendix 2
- c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 2
- d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation 1¹
- e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit 2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided: 1
 - a. The capacity difference is no more than 1500 gallons;
 - b. The facility's permitted tank capacity is not increased; and
 - c. The replacement tank meets the same conditions in the permit.
4. Modification of a tank management practice 2
5. Management of different wastes in tanks:
 - a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below 3
 - b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly

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- different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below 2
- c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1¹
- d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

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Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

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H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface 3
2. Replacement of a surface impoundment unit 3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system 2
4. Modification of a surface impoundment management practice 2
5. Treatment, storage, or disposal of different wastes in surface impoundments:
- a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit 3
- b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit 2
- c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

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- d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

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6. Modifications of unconstructed units to comply with §§264.221(c), 264.222, 264.223 and 264.226(d) 1'
 7. Changes in response action plan:
 a. Increase in action leakage rate 3
 b. Change in a specific response, reducing its frequency or effectiveness 3
 c. Other Changes 2

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Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

- I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill.

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The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).

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1. Modification or addition of waste pile units:
 a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity 3
 b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity 2
 2. Modification of waste pile unit without increasing the capacity of the unit 2
 3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit 1
 4. Modification of a waste pile management practice 2
 5. Storage or treatment of different wastes in waste piles:
 a. That require additional or different management practices or different design of the unit 3
 b. That do not require additional or different management practices or different design of the unit 2

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Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

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6. Conversion of an enclosed waste pile to a containment building unit 2

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J. Landfills and Unenclosed Waste Piles

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1. Modification or addition of landfill units that result in increasing the facility's disposal capacity 3
2. Replacement of a landfill 3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system 3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system 2
5. Modification of a landfill management practice 2
6. Landfill different wastes:
 - a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system 3
 - b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system 2
 - c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1
 - d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) 1

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Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

7. Modifications of unconstructed units to comply with §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 1'
8. Changes in response action plan:
 - a. Increase in action leakage rate 3
 - b. Change in a specific response reducing its frequency or effectiveness 3

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c. Other changes2

K. Land Treatment

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1. Lateral expansion of or other modification of a land treatment unit to increase areal extent3
2. Modification of run-on control system2
3. Modify run-off control system3
4. Other modifications of land treatment unit component specifications or standards required in the permit2
5. Management of different wastes in land treatment units:
 - a. That require a change in permit operating conditions or unit design specifications3
 - b. That do not require a change in permit operating conditions or unit design specifications2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment management practice to:
 - a. Increase rate or change method of waste application3
 - b. Decrease rate of waste application1
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions2
8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2)3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid2
13. Changes in sampling, analysis, or statistical procedure2

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14. Changes in land treatment demonstration program prior to or during the demonstration	2	mon
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received	1 ¹	requ
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director	1 ¹	perf
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration	3	5. Ope
18. Changes in vegetative cover requirements for closure	2	a.
L. Incinerators, Boilers and Industrial Furnaces		
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3	b.
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	2	c.
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HC1/C1 ₂ , metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means	3	6. Bu
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or		a.
Note: See § modification		
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		b.

monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards 2

5. Operating requirements:

- a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
- b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls 3
- c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit 2

6. Burning different wastes:

- a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means 3
- b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit 2

Note: See §305.69(g) of this title (relating to Newly Regulated Wastes and Units) for modification procedures to be used for the management of newly regulated wastes and units.

7. Shakedown and trial burn:

- a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn 2
- b. Authorization of up to an additional 720 hours of waste burning

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amended to be effective April 1, 1990, 15 TexReg 6015; amended to be effective February 26, 1992, 17 TexReg 5090; amended to be effective August 8, 1999, 24 TexReg 8543

§ 305.70. Municipalities

(a) A permittee may request a modification to a permit provided the permittee obtains prior written authorization from the executive director specifying the conditions or to support the permit, and changes are necessary. The permittee must submit two copies of the modification request in accordance with §305.44 (Relates to Applications). The modification request with supporting information constitutes grounds for denial of the permit without further action.

(b) The permittee must submit a modification request by first-class mail in §305.103(b) of this title (Class I per subsection (g) of this section). This notification must be received within 30 calendar days upon the request notice as required, request is automatic.

(c) No later than 60 days after the modification request is received, the executive director must:

- (1) approve the request without changes, or
- (2) deny the request;
- (3) request additional information from the permittee;
- (4) determine if the request qualifies as a Class I permit amendment pursuant to §305.103(b) of this title.

(d) If a request for a modification is denied by the executive director, the permittee may change in a term, condition, or permit that is not authorized as a Class I permit amendment (relating to Amendment).

- during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director 1¹
- c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director 1¹
- d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director 1¹
8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit 1
9. Technology changes needed to meet standards under Title 40 Code of Federal Regulations (CFR) Part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), provided the procedures of §305.69(i) are followed. 1¹

M. Corrective Action

1. Approval of a corrective action management unit pursuant to 40 Code of Federal Regulations §264.552 3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 Code of Federal Regulations §264.553 2

N. Containment Buildings

1. Modification or addition of containment building units:
 - a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity 3
 - b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity 2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit 2
3. Replacement of a containment building with a containment building that meets the same design standards provided:
 - a. The unit capacity is not increased 1
 - b. The replacement containment building meets the same conditions in the permit 1
4. Modification of a containment building management practice 2
5. Storage or treatment of different wastes in containment buildings:
 - a. That require additional or different management practices 3
 - b. That do not require additional or different management practices 2

Source: The provisions of this §305.69 adopted to be effective October 29, 1990, 15 TexReg 6015; amended to be effective July 29, 1992, 17 TexReg 5090; amended to be effective June 7, 1993, 18

TexReg 3290; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 22, 1994, 19 TexReg 941; amended to be effective November 7, 1994, 19 TexReg 8543;

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amended to be effective April 17, 1995, 20 TexReg 2392; amended to be effective February 26, 1996, 21 TexReg 1137; amended to be effective August 8, 1999, 24 TexReg 5879

§ 305.70. Municipal Solid Waste Class I Modifications

(a) A permittee may put into effect a Class I modification to a municipal solid waste (MSW) permit provided that the permittee has received prior written authorization for such Class I modification from the executive director. In order to receive prior written authorization, the permittee must submit a modification request to the executive director specifying the changes to be made to permit conditions or to supporting documents referenced by the permit, and explaining in detail why such changes are necessary. The permittee must submit two copies of the modification request in accordance with §305.44 of this title (relating to Signatories to Applications). Failure to submit the modification request with complete information shall constitute grounds for returning the request to the permittee without further action.

(b) The permittee must send notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail) if the Class I permit modification identified in subsection (g) of this section is marked by a superscript 1. This notification must be made no later than 30 calendar days after the executive director acts upon the request. If the permittee fails to give notice as required, approval of the modification request is automatically revoked.

(c) No later than 60 calendar days after receipt of the modification request, the executive director must:

- (1) approve the modification request, with or without changes, and modify the permit accordingly;
- (2) deny the request;
- (3) request additional information concerning the request from the permittee; or
- (4) determine that the modification request does not qualify as a Class I permit modification, and that the requested change requires a permit amendment pursuant to §305.62 of this title (relating to Amendment).

(d) If a request for a Class I permit modification is denied by the executive director, the permittee must comply with the original permit conditions. Any change in a term, condition, or provision of an MSW permit that is not authorized by the executive director as a Class I permit modification requires a permit amendment pursuant to §305.62 of this title (relating to Amendment).

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(e) If after 60 days from receipt of a modification request that is specifically identified in subsection (g) of this section, the executive director fails to approve or deny the request or to notify the permittee that the requested modification requires a permit amendment pursuant to §305.62 of this title (relating to Amendment), the modification request shall be automatically approved. The executive director may extend this 60-day time period if necessary to review additional information submitted pursuant to subsection (c)(3) of this section. The length of the extension shall be equivalent to the amount of time necessary to review the additional information.

(f) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods set out in subsections (c) and (e) of this section.

(g) The following is a list of possible Class I modifications to an MSW permit:

- (1) a change in the sequence of landfill development;
- (2) a change in the size and/or shape of a trench to obtain a 3:1 side slope, as long as there is no increase in capacity;
- (3) replacement of existing monitor wells that have been damaged or rendered inoperable, with no change to design or depth of the wells and a change in location of up to 20 feet horizontally;
- (4) changes in the location of marker systems (i.e., grid markers);
- (5) improvements to a fire protection plan;
- (6) changes to interior road location in order to prevent traffic through the disposal area;
- (7) changes in interior road design and construction materials;
- (8) increases in sampling frequency (e.g., for groundwater, methane, etc.);
- (9) changes in excavation details, except for increases in depth that would change the SLOCP or increase the site life;
- (10) corrections to the metes and bounds description of the permit boundaries that do not increase the size of the facility;
- (11) upgrade of landfill liner design, installation, or quality control testing to reflect the requirements of revised regulations which provide for greater environmental protection;
- (12) installation of a leachate collection system;
- (13) installation of a methane gas monitoring system;
- (14) installation of a methane gas collection

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system or the installation of additional collection wells to an existing gas collection system;

(15) changes in closure or post-closure care requirements to reflect the requirements of revised regulations which provide for increased environmental protection;

(16) the use of alternate daily cover on a trial basis not to exceed six months with one six-month extension allowable;

(17) changes regarding the use of alternate wind-blown waste control methods;

(18) substitution of an equivalent financial assurance mechanism;

(19) temporary changes in operating hours to address natural-disaster situations or to accommodate special community events;

(20) changes in the drainage control plan that improve internal stormwater runoff/runoff handling without impacting offsite drainage;

(21) changes in the entry gate location or site layout that relocate gatehouse, office, or maintenance building locations, or add scales to the facility, so long as the changes do not alter access traffic patterns delineated in the site development plan and/or the permit;

(22) changes to a site layout plan that add or delete a properly registered or exempted MSW facility—a used or scrap tire collection area, a recycling collection area, a sludge/grease/grit trap processing or stabilization facility, a petroleum contaminated soil stabilization area, a registered transfer station, a citizens' collection area, a pesticide container collection area, a composting operation, or other activity properly registered with the commission;

(23) subject to the limitation under subsection (h) of this section, an increase in landfill height that meets one of the following conditions:

(A) the entire facility or a portion of the facility either ceases the receipt of solid waste within 365 days of executive director approval of the height increase and initiates formal closure of the entire facility or a portion of the facility, or has formally closed the facility or a portion of the facility; or

(B) the facility has submitted a request for a major permit amendment pursuant to §305.62(c)(1) of this title (relating to Amendments) to increase the height of the landfill; or

(C) the height increase is requested solely for the purpose of improving drainage from the filled area, and:

(i) the waste disposal area is not expanded into the limits of the buffer zone or within easements that exist; and

(ii) final contour elevations, including final cover, are no greater than 10 feet above the maximum final contour elevation of the contiguous landfilled area or phase of landfill development;

(24) a modification in the operation of a landfill that will change the incoming waste stream from a more restrictive waste stream to a less restrictive waste stream, i.e., a change from a Type I, II, or III landfill operation to a Type IV landfill operation may be granted, provided that the receipt of waste under the present operation has ceased and that the following conditions shall be satisfied.

(A) Permanent closure of the filled portion of the landfill shall be initiated in accordance with the regulations for closure of municipal solid waste landfills. Completion may occur after the approval of the request to change the site operation.

(B) The permittee shall provide a public notice of the proposed action to the general public by publishing the notice, within 15 days after the request, in a newspaper with general circulation in the area in which the landfill is located, and submitting a certified copy of the notice, within 15 days after publication, to the executive director as a record of this action.

(C) The permittee shall conduct a public meeting in the local area, within 30 days after the request, to describe the proposed action to the general public and provide evidence, within 15 days after the meeting, to the executive director that the meeting was held.

(D) The permittee shall submit, for approval and with the request for a change, documents that show the appropriate modifications to the site development plan and site operating plan to reflect the proposed change in operation.

(25) Changes to comply with the provisions of §330.203 of this title (relating to Special Conditions (Liner Design Constraints)).

(h) Authorization to increase the height of a landfill, in accordance with subsection (g)(23) of this section, may only be granted one time as a Class I modification. Subsequent requests for an increase in height require a permit amendment. Height increases granted under subsection (g)(23) of this section that exceed 10 feet above the approved final elevations must be justified and the request must

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demonstrate that an of the site will not oc

(i) In case of a rec for a change in a terr MSW permit not exp this section, the exe determination as to quest may be proces: whether the change pursuant to §305. Amendment). In m executive director sh requested change t listed in subsection (following criteria.

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(j) A temporary at the executive direct 180 days for activit disruption of solid w permittee must req and must include in tion of the activities nation of why the te sary, reasonable, a authorization may

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demonstrate that an increase in the capacity or life
of the site will not occur.

(i) In case of a request for a Class I modification
for a change in a term, condition, or provision of an
MSW permit not explicitly listed in subsection (g) of
this section, the executive director shall make the
determination as to whether the modification re-
quest may be processed as a Class I modification or
whether the change requires a permit amendment
pursuant to §305.62 of this title (relating to
Amendment). In making this determination, the
executive director shall consider the similarity of the
requested change to those Class I modifications
listed in subsection (g) of this section, as well as the
following criteria.

(1) Class I modifications apply to minor changes
to the facility or its operation that are routine in
nature.

(2) Class I modifications do not substantially
alter the permit conditions or reduce the capacity
of the facility to protect human health or the
environment.

(j) A temporary authorization may be granted by
the executive director for a term of not more than
180 days for activities or events that will prevent
disruption of solid waste management activities. The
permittee must request a temporary authorization
and must include in the request a specific descrip-
tion of the activities to be conducted and an expla-
nation of why the temporary authorization is neces-
sary, reasonable, and unavoidable. A temporary
authorization may be reissued for an additional

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term of 180 days if the circumstances warrant
additional time or if the permittee has applied for an
amendment or modification to the permit.

Source: The provisions of this §305.70 adopted to be effective
June 7, 1993, 18 TexReg 3290; amended to be effective Decem-
ber 27, 1995, 20 TexReg 10788.

§ 305.71. Basin Permitting

(a) Upon receipt of wastewater discharge permit
applications, excluding permits for confined animal
feeding operations, the commission, to the greatest
extent practicable, will evaluate all future applica-
tions within a single river basin within the same
year. The future expiration dates for all permits
issued after the effective date of this section shall be
in accordance with the basin schedules in subsec-
tion (b) of this section. However, no permit shall be
issued for a term of less than two years, except as
specified in this subsection. If the schedule indicates
a term of less than two years, then two terms
between two and five years in length will be utilized
in order to coincide with the schedule. There may be
instances where two permit cycles are needed for
some permits before they are on the basin cycle. The
commission may issue new Texas Pollutant Dis-
charge Elimination System (TPDES) permits for
less than two years duration for discharges autho-
rized by an existing state permit issued before Sep-
tember 14, 1998.

(b) The expiration dates of wastewater discharge
permits issued after the effective date of this rule will
be in accord with the following schedule.

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BASIN	SEGMENT	EXPIRATION DATE
FISCAL YEAR 1996		
01: Canadian River	0100 - 0105	October 1, 1995
02: Red River	0200 - 0229	December 1, 1995
03: Siskyou River	0300 - 0305	January 1, 1996
04: Cypress Creek	0400 - 0409	February 1, 1996
05: Sabine River	0506 - 0515	March 1, 1996
	0500 - 0505	April 1, 1996
24: Bays and Estuaries	2411	June 1, 1996
06: Neches River	0610 - 0614	August 1, 1996
	0600 - 0609	August 1, 1996
08: Trinity River	0824 - 0841	September 1, 1996
FISCAL YEAR 1997		
08: Trinity River	0819 - 0823	October 1, 1996
	0805 - 0818	December 1, 1996
	0800 - 0804	February 1, 1997
10: San Jacinto River	1012	March 1, 1997
	1014	May 1, 1997
	1010 - 1013	June 1, 1997
	1007	September 1, 1997
FISCAL YEAR 1998		
10: San Jacinto River	1015 - 1016	December 1, 1997
	1009	February 1, 1998
	1008	March 1, 1998
	1006	May 1, 1998
	1000 - 1005	July 1, 1998
07: Neches-Trinity Coastal	0700 - 0704	July 1, 1998
24: Bays and Estuaries	2412	July 1, 1998
	2422 - 2423	July 1, 1998
09: Trinity-San Jacinto Coastal	0900 - 0902	August 1, 1998
24: Bays and Estuaries	2426	August 1, 1998
	2428 - 2430	August 1, 1998
11: San Jacinto-Brazos Coastal	1100 - 1113	September 1998
FISCAL YEAR 1999		
24: Bays and Estuaries	2421	October 1, 1998
	2424 - 2425	October 1, 1998
	2427	October 1, 1998
	2431 - 2439	November 1, 1998
12: Brazos River	1242 - 1255	December 1, 1998
	1227 - 1241	March 1, 1999
	1220 - 1226	March 1, 1999
	1204 - 1219	May 1, 1999
	1200 - 1203	July 1, 1999
13: Brazos-Colorado Coastal	1300 - 1305	July 1, 1999
24: Bays and Estuaries	2441 - 2442	August 1, 1999
16: Lavaca	1600 - 1605	August 1, 1999
14: Colorado River	1417 - 1433	September 1, 1999
FISCAL YEAR 2000		
14: Colorado River	1400 - 1416	December 1, 1999
15: Colorado-Lavaca	1500 - 1502	December 1, 1999
24: Bays and Estuaries	2451 - 2452	December 1, 1999
	2453 - 2456	January 1, 2000
17: Lavaca-Quadrado	1700	February 1, 2000
18: Quadrado River	1800 - 1818	February 1, 2000
19: San Antonio River	1900 - 1913	March 1, 2000
20: San Antonio-Mueller Coastal	2000 - 2004	March 1, 2000
24: Bays and Estuaries	2461 - 2463	March 1, 2000
	2471 - 2473	March 1, 2000
	2481 - 2483	April 1, 2000
21: Nueces River	2108 - 2117	May 1, 2000
22: Nueces-Rio Grande Coastal	2200 - 2204	June 1, 2000
24: Bays and Estuaries	2484 - 2485	June 1, 2000
	2491 - 2494	July 1, 2000
23: Rio Grande	2300 - 2314	September 1, 2000
25: Gulf of Mexico	2500	September 1, 2000

(c) Renewal application or after September 1, days before the expiration permit. The executive for a later date; has submitted prior to the

(d) The executive decision of a renewal application set out in subsections a determination that activity necessitates a

(e) Permits general five-year cycle of the subsection (b) of this issue a permit for the determines that a shall

Source: The provisions January 17, 1995, 20 TexReg 1999, 24 TexReg 4441

§ 305.72. Under Per que

(a) This section applies to section Control permit

(b) With the permission director may modify make the correction the permitted activity following the procedure this chapter. Any change as a minor modification made for cause and public notice required may only:

- (1) Correct typographical
- (2) Require modification by the permit
- (3) Change an schedule of completion not more than 120 the existing permit attainment of the ment;
- (4) Change qualification which are within permitted and in director, would not the facility or its scribed in the permit classification;
- (5) Change conditions

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(c) Renewal applications for permits expiring on or after September 1, 1995, shall be due at least 180 days before the expiration date of the effective permit. The executive director may grant permission for a later date; however, applications must be submitted prior to the expiration date of the permit.

(d) The executive director may require submission of a renewal application sooner than the dates set out in subsections (b) and (c) of this section upon a determination that a particular waste disposal activity necessitates a more frequent evaluation.

(e) Permits generally will be issued to maintain a five-year cycle of the expiration date schedule in subsection (b) of this section. The commission may issue a permit for less than a five-year term if it determines that a shorter term is necessary.

Source: The provisions of this §305.71 adopted to be effective January 17, 1995, 20 TexReg 19; amended to be effective June 17, 1999, 24 TexReg 4441

§ 305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee

(a) This section applies only to Underground Injection Control permits.

(b) With the permittee's consent, the executive director may modify administratively a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures and notice requirements of this chapter. Any change to the permit not processed as a minor modification under this section must be made for cause and in compliance with appropriate public notice requirements. Minor modifications may only:

- (1) Correct typographical errors;
- (2) Require more frequent monitoring or reporting by the permittee;
- (3) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
- (4) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and in the judgement of the executive director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;
- (5) Change construction requirements, pro-

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vided that the alterations comply with the requirements of Chapter 331 of this title (relating to Underground Injection Control); or

(6) Amend a plugging and abandonment plan which has been updated under §305.154(7) of this title (relating to Standards).

Source: The provisions of this §305.72 adopted to be effective February 11, 1997, 22 TexReg 1169.

SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

§ 305.121. Applicability

The provisions of this subchapter establish the characteristics and standards for permits issued for injection wells, waste discharge, and solid waste management, including sewage sludge.

Source: The provisions of this §305.121 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492.

§ 305.122. Characteristics of Permits

(a) Compliance with a Resource Conservation and Recovery Act (RCRA) permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

- (1) become effective by statute;
- (2) are promulgated under Title 40 Code of Federal Regulations, Part 268 restricting the placement of hazardous wastes in or on the land; or
- (3) are promulgated under Title 40 Code of Federal Regulations, Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response through the Class 1 permit modifications procedures of Title 40 Code of Federal Regulations, §270.42 (concerning permit modification at the request of the permittee).

(b) A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee.

(c) The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

(d) Except for any toxic effluent standards and prohibitions imposed under Clean Water Act (CWA),

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§307, and standards for sewage sludge use or disposal under CWA, §405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§301, 302, 306, 307, 318, 403, and 405; however, a TPDES permit may be amended or revoked during its term for cause as set forth in §305.62 and §305.66 of this title (relating to Amendment; and Permit Denial, Revocation, and Suspension).

Source: The provisions of this §305.122 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective November 23, 1993, 18 TexReg 8215; amended to be effective February 26, 1996, 21 TexReg 1137.

§ 305.123. Reservation in Granting Permit

Every permit is subject to further orders and rules of the commission. In accordance with the procedures for amendments and orders, the commission may incorporate into permits already granted any condition, restriction, limitation, or provision reasonably necessary for the administration and enforcement of Texas Water Code, Chapters 26, 27, and and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

Source: The provisions of this §305.123 adopted to be effective June 19, 1986, 11 TexReg 2597.

§ 305.124. Acceptance of Permit, Effect

Acceptance of the permit by the person to whom it is issued constitutes an acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the commission.

Source: The provisions of this §305.124 adopted to be effective June 19, 1986, 11 TexReg 2597.

§ 305.125. Standard Permit Conditions

Conditions applicable to all permits issued under this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are:

(1) The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

(2) The permittee must apply for an amendment or renewal before the expiration of the existing permit in order to continue a permitted

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activity after the expiration date of the permit. Authorization to continue such activity terminates upon the effective denial of said application.

(3) It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions.

For UIC permits, proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit conditions.

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit, and copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director before physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A) Such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission shall also be provided within five days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of

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noncompliance, if the noncompliance is not corrected by the time it is expected to be taken or planned to prevent recurrence to mitigate its adverse effects.

(B) The following actions shall be taken within 24 hours under this section:

(i) any unauthorized discharge of any effluent into the environment;

(ii) violation of any condition, restriction, limitation, or provision of the permit or the TPDES permit conditions.

(10) Inspection of a facility under Texas Water Code, Chapter 26, Safety Code, §§36.01 to 36.04, and 40 Code of Federal Regulations, Part 503, shall be conducted in accordance with the requirements of the Texas Water Code, Chapter 26, Safety Code, §§36.01 to 36.04, and 40 Code of Federal Regulations, Part 503. The statement in the permit entry concerning fire protection is not a condition of entry to a facility. The statement describes the compliance with the appropriate rules and regulations.

(11) Monitoring shall be conducted as follows:

(A) Monitoring shall be taken at the facility and be representative of the facility.

(B) Except for monitoring required by the permittee's severities, which shall be at least five years (Part 503), monitoring shall include strip and maintenance by the permit, complete the application certification re shall be retained of three years sample, measurement certification. The request of

(C) Records shall include:

(i) date, time, and location of monitoring;

(ii) identification of the sample or noncompliance.

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noncompliance, including exact dates and times;
if the noncompliance has not been corrected,
the time it is expected to continue; and steps
taken or planned to reduce, eliminate, and
prevent recurrence of the noncompliance, and
to mitigate its adverse effects.

(B) The following must be reported within 24
hours under this paragraph:

(i) any unanticipated bypass which exceeds
any effluent limitation in a TPDES permit;

(ii) violation of a maximum daily discharge
limitation for any pollutants listed in a TP-
DES permit to be reported within 24 hours.

(10) Inspection and entry shall be allowed un-
der Texas Water Code, Chapters 26-28, Health and
Safety Code, §§361.032-361.033 and 361.037, and
40 Code of Federal Regulations (CFR) §122.41(i).
The statement in Texas Water Code, §26.014 that
commission entry of a facility shall occur in ac-
cordance with an establishment's rules and regu-
lations concerning safety, internal security, and
fire protection is not grounds for denial or restric-
tion of entry to any part of the facility, but merely
describes the commission's duty to observe appro-
priate rules and regulations during an inspection.

(11) Monitoring and reporting requirements are
as follows:

(A) Monitoring samples and measurements
shall be taken at times and in a manner so as to
be representative of the monitored activity.

(B) Except for records of monitoring infor-
mation required by a permit related to the
permittee's sewage sludge use and disposal ac-
tivities, which shall be retained for a period of at
least five years (or longer as required by 40 CFR
Part 503), monitoring and reporting records,
including strip charts and records of calibration
and maintenance, copies of all records required
by the permit, records of all data used to com-
plete the application for this permit, and the
certification required by 40 CFR §264.73(b)(9)
shall be retained at the facility site for a period
of three years from the date of the record or
sample, measurement, report, application, or
certification. This period shall be extended at
the request of the executive director.

(C) Records of monitoring activities shall in-
clude:

(i) date, time, and place of sample or mea-
surement;

(ii) identity of individual who collected the
sample or made the measurement;

30 TAC § 305.125

(iii) date of analysis;

(iv) identity of the individual and labora-
tory who performed the analysis;

(v) the technique or method of analysis
and

(vi) the results of the analysis or
measurement.

(12) Any noncompliance other than that speci-
fied in this section, or any required information
not submitted or submitted incorrectly shall be
reported to the executive director as promptly as
possible.

(13) A permit may be transferred only accord-
ing to the provisions of §305.64 of this title (relat-
ing to Transfer of Permits) and §305.97 of this title
(relating to Action on Application for Transfer).

(14) All reports and other information re-
quested by the executive director shall be signed
by the person and in the manner required by
§305.128 of this title (relating to Signatories to
Reports).

(15) A permit may be amended, suspended and
reissued, or revoked for cause. The filing of a
request by the permittee for a permit amendment,
suspension and reissuance, or termination, or a
notification of planned changes or anticipated
noncompliance does not stay any permit condition.

(16) A permit does not convey any property
rights of any sort or any exclusive privilege.

(17) Monitoring results shall be provided at the
intervals specified in the permit.

(18) Reports of compliance or noncompliance
with, or any progress reports on, interim and final
requirements contained in any compliance sched-
ule of the permit shall be submitted no later than
14 days following each schedule date.

(19) Where the permittee becomes aware that it
failed to submit any relevant facts in a permit
application, or submitted incorrect information in
an application, or in any report to the executive
director, it shall promptly submit such facts or
information.

(20) The permittee is subject to administrative,
civil, and criminal penalties, as applicable, under
Texas Water Code, §§26.136, 26.212, and 26.213,
for violations including but not limited to the
following:

(A) negligently or knowingly violating CWA,
§§301, 302, 306, 307, 308, 318, or 405, or any
condition or limitation implementing any sec-
tions in a permit issued under CWA, §402, or

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any requirement imposed in a pretreatment program approved under CWA, §402(a)(3) or §402(b)(8);

(B) falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under a permit; or

(C) knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.

(21) For hazardous waste management facility permits, the executive director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 Code of Federal Regulations (CFR) §124.33(b), as amended through December 11, 1995, at 60 FedReg 63417. The information repository will be governed by the provisions in 40 CFR §124.33(c)-(f), as amended through December 11, 1995, at 60 FedReg 63417.

Source: The provisions of this §305.125 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3513; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective February 11, 1997, 22 TexReg 1169; amended to be effective August 8, 1999, 24 TexReg 5879

§ 305.126. Additional Standard Permit Conditions for Waste Discharge Permits

(a) Whenever flow measurements for any sewage treatment plant facility in the state reaches 75% of the permitted average daily or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever the average daily or annual average flow reaches 90% of the permitted average daily flow for three consecutive months, the permittee shall obtain necessary authorization from the commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75% of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If in the judgment of the executive director the population to be served will not cause permit noncompliance,

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then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the enforcement division of the commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

(b) The permittee shall give notice to the executive director as soon as possible of any planned physical alterations or additions to the permitted facility. In addition to the requirements of §305.125(7) of this title (relating to Standard Permit Conditions), notice shall also be required under this subsection when:

(1) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in §305.534 of this title (relating to New Sources and New Dischargers); or

(2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 Code of Federal Regulations (CFR) §122.42(a)(1) as adopted by §305.531 of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);

(3) the alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(c) If the permittee is a new discharger, it must provide quantitative data described in 40 CFR §122.21(h)(4)(I) and (ii) no later than two years after commencement of discharge; however, the permittee need not conduct tests which the permittee has already performed and reported under the discharge monitoring requirements of its TPDES permit.

Source: The provisions of this §305.126 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective June 25, 1990, 15 TexReg 3416; amended to be effective October 8, 1990, 15 TexReg 5492; amended to be effective April 24, 1995, 20 TexReg 2708; amended to be effective December 27, 1998, 23 TexReg 12930.

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§ 305.127. Conditions to be

Conditions to be basis according to the when applicable, in person or by reference

(1) Duration.

(A) Injection

(i) Permits shall be for a years.

(ii) Permits may be for the shall be reviewed years.

(B) Solid waste

(i) Hazardous fixed term not

(ii) Other than the life of the

(iii) Each permit used to manage reviewed by the from the data and shall the commission this title (relating to)

(C) Waste disposal

(i) Texas permit system (TPDES permits, shall years.

(ii) All other

(I) Permit charge of a away shall years.

(II) Construction permits may

(III) Other permit systems, shall ten years.

(D) Drilled or mined shaft permit of a drilled or mined to exceed ten years

(E) Term of permit not be extended maximum duration

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§ 305.127. Conditions To Be Determined for Individual Permits

Conditions to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable, incorporated into the permit expressly or by reference, are:

(1) Duration.

(A) Injection well permits.

(i) Permits for Class I and Class V wells shall be for a fixed term not to exceed ten years.

(ii) Permits for Class III wells or projects may be for the life of the well or project, and shall be reviewed at least once every five years.

(B) Solid waste permits.

(i) Hazardous waste permits shall be for a fixed term not to exceed ten years.

(ii) Other solid waste permits may be for the life of the project.

(iii) Each permit for a land disposal facility used to manage hazardous waste shall be reviewed by the executive director five years from the date of permit issuance or reissuance and shall be modified as necessary by the commission, as provided in §305.62(e) of this title (relating to Amendment).

(C) Waste discharge permits.

(i) Texas pollutant discharge elimination system (TPDES) permits, including sludge permits, shall be for a term not to exceed five years.

(ii) All other permits shall be as follows:

(I) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be for a term not to exceed five years.

(II) Confined animal feeding operation permits may be for the life of the project.

(III) Other wastewater permits, including permits which regulate land disposal systems, shall be for a term not to exceed ten years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be for a term not to exceed ten years.

(E) Term of permit. The term of a permit shall not be extended by amendment beyond the maximum duration specified in this section.

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(F) Duration of permit. The executive director may recommend that a permit be issued and the commission may issue any permit, for a duration less than the full allowable term under this section.

(2) Monitoring, recording, and reporting.

(A) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods shall be specified by the commission as appropriate.

(B) The type, intervals, and frequency of monitoring shall be set to yield data representative of the monitored activity, at a minimum as specified in commission rules for monitoring and reporting.

(C) Other requirements for monitoring and reporting shall be set at a minimum as specified in commission rules for monitoring and reporting.

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate law, and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit. For TPDES permits the schedule of compliance shall require compliance not later than authorized by Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

(C) Reporting requirements for each schedule of compliance shall be specified by the commission as appropriate. Reports of progress and completion shall be submitted to the executive director no later than 14 days after each schedule date.

(D) For TPDES permits the following additional conditions apply:

(i) The first TPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain

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compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge.

(ii) For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(iii) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the permit schedule shall set forth interim requirements and the dates for their achievement.

(E) For UIC permits, the time for compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit. Except as provided in clause (iii)(I)-(b-) of this subparagraph, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(iii) A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows:

(I) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(-a-) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(-b-) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already

specified in the permit.

(II) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the cessation date, the permit shall contain a schedule leading to cessation of activities which will ensure timely compliance with applicable requirements.

(III) If the permittee is undecided whether to cease conducting regulated activities, the executive director may issue or modify a permit to contain two schedules as follows:

(-a-) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(-b-) One schedule shall lead to timely compliance with applicable requirements;

(-c-) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(-d-) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under item (-a-) of this subclause, it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to cessation if the decision is to cease conducting regulated activities.

(IV) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the executive director, such as a resolution of the board of directors of a corporation.

(4) Requirements for individual programs.

(A) Requirements to provide for and assure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in permits on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human

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(B) Any applicable requirements with respect to administrative costs, including the cost of a permit or prior approval, or suspension, shall be included in the fee.

(C) New, amendments shall include provisions relating to: (i) the title (relating to the Municipal Hazardous Waste Facility Standards) relating to Effluent Standards, and (ii) Drilled and Mined Shaft Standards.

(5) Wastes autl

(A) Injection waste to be disposed of is authorized in the

(B) Drilled or category of waste or disposed of associated surf in the permit.

(C) Unauthorized reproduction, storage, or transmission in a permitted medium is prohibited.

(6) Permit conditions may be incorporated by reference. If incorporated by reference, the applicable provisions shall be given in the permit.

Source: The provision was added by Chapter 100, Acts of 1986, effective June 19, 1986, 11 TexReg 1009; amended by Chapter 100, Acts of 1990, 15 TexReg 5492; Chapter 100, Acts of 1991, 15 TexReg 6015; amended by Chapter 100, Acts of 1999, 24 TexReg 4999; amended to be effective January 1, 2001, by Chapter 100, Acts of 2000, 24 TexReg 4999.

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ing to Municipal Solid Waste) for municipal
solid waste facility standards, to Chapter 331 of
this title (relating to Underground Injection
Control) for injection well standards, to Chapter
335 of this title (relating to Industrial Solid
Waste and Municipal Hazardous Waste) for solid
waste facility standards, and to Chapter 309 of
this title (relating to Effluent Standards) for
waste discharge standards and to Chapter 329
of this title (relating to Drilled or Mined Shafts)
for drilled or mined shaft standards.

(B) Any applicable statutory or regulatory
requirements which take effect prior to final
administrative disposition of an application for
a permit or prior to the amendment, modifica-
tion, or suspension and reissuance of a permit
shall be included in the permit.

(C) New, amended, modified, or renewed per-
mits shall incorporate any applicable require-
ments contained in Chapter 331 of this title
(relating to Underground Injection Control) for
injection well standards, Chapter 335 of this
title (relating to Industrial Solid Waste and
Municipal Hazardous Waste) for solid waste
facility standards, Chapter 309 of this title (relat-
ing to Effluent Standards) (waste discharge
standards), and Chapter 329 of this title (relat-
ing to Drilled or Mined Shafts) for drilled or
mined shaft standards.

(5) Wastes authorized.

(A) Injection well permits. Each category of
waste to be disposed of by injection well shall be
authorized in the permit.

(B) Drilled or mined shaft permits. Each cat-
egory of waste to be handled, stored, processed,
or disposed of in a drilled or mined shaft, or in
associated surface facilities shall be authorized
in the permit.

(C) Unauthorized wastes. Wastes not autho-
rized by permit are prohibited from being trans-
ported to, stored, and processed or disposed of
in a permitted facility.

(6) Permit conditions. All permit conditions shall
be incorporated either expressly or by reference.
If incorporated by reference, a specific citation to
the applicable rules or requirements must be
given in the permit.

Source: The provisions of this §305.127 adopted to be effective
June 19, 1986, 11 TexReg 2597; amended to be effective October 8,
1990, 15 TexReg 5492; amended to be effective October 29, 1990,
15 TexReg 6015; amended to be effective June 13, 1996, 21 TexReg
4999; amended to be effective February 11, 1997, 22 TexReg 1169.

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§ 305.128. Signatories to Reports

(a) All reports requested by permits and other
information requested by the executive director shall
be signed by a person described in §305.44(a) of this
title (relating to Signatories to Applications) or by a
duly authorized representative of that person. A
person is a duly authorized representative only if:

(1) the authorization is made in writing by a
person described in §305.44(a) of this title (relat-
ing to Signatories to Applications);

(2) the authorization specifies either an indi-
vidual or a position having responsibility for the
overall operation of the regulated facility or activi-
ty or for environmental matters for the applicant,
such as the position of plant manager, operator of
a well or well field, environmental manager, or a
position of equivalent responsibility. (A duly au-
thorized representative may thus be either a named
individual or any individual occupying a named
position); and

(3) the written authorization is submitted to the
executive director.

(b) If an authorization under this section is no
longer accurate because of a change in individuals
or position, a new authorization satisfying the re-
quirements of this section must be submitted to the
executive director prior to or together with any
reports, information, or applications to be signed by
an authorized representative.

(c) Any person signing a report required by
permit shall make the certification set forth in §305.
44(b) of this title (relating to Signatories to
Applications).

Source: The provisions of this §305.128 adopted to be effective
June 19, 1986, 11 TexReg 2597; amended to be effective July 14,
1987, 12 TexReg 2102; amended to be effective October 8, 1990, 15
TexReg 5492.

§ 305.129. Variance Procedures

The following regulations contained in 40 Code of
Federal Regulations, which are in effect as of the
date of Texas pollutant discharge elimination system
(TPDES) program authorization, as amended, are
adopted by reference:

(1) Part 122, Subpart B—Permit Applications
and Special National Pollutant Discharge Elim-
ination System (NPDES) Program Requirements,
§122.21(m), providing requirements for variance
requests by nonpublicly owned treatment works;

(2) Part 122, Subpart B—Permit Applications
and Special NPDES Program Requirements, §122.
21(n), providing requirements for various re-

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tion of the occurre

(B) name, address, and telephone number of the facility:

(C) date, time
(D) name and involved:

(E) the extent

(1) all assess-
ards to the env:
safety outside t
cable: and

(G) estimated covered material

(b) The executive written notice required by this title (relating to the removal of an officer in favor of a written notice) shall be given within 15 days.

Source: The provisions June 19, 1986, 11 TexRe 1987, 12 TexReg 998.

Any issued, amended, or renewed management facility meeting requirements.

(1) Within the
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shall provide noti
have an independ
of the facility p
issued in accorda

(A) The notice shall be sent to three independent

facility owner
ronmental aud
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The facility ov
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been employe

(B) The notice shall be given at the time and place, to be held

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d in an emergency

adopted to be effective

groundwater monitoring shall maintain monitoring wells and elevations for the disposal facilities for well.

adopted to be effective

Inspection

tee may not removal of solid waste; the permittee may solid waste in the except as provided in Solid Waste Permit (e Permittee) until: ed to the executive and delivery a letter a Texas registered that the facility has n compliance with

nspected the modification and finds it is in of the permit; or if the letter required, the permittee has executive director of pection is waived, nence processing, ste.

adopted to be effective be effective October 29,

Regulation of Solid Waste

ded as information within 24 hours title (relating to

release of any solid germent to public

ase or discharge of sion from a facility, onment or human ility. The descrip-

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tion of the occurrence and its cause shall include:

(A) name, address, and telephone number of the owner or operator;

(B) name, address, and telephone number of the facility;

(C) date, time, and type of incident;

(D) name and quantity of material(s) involved;

(E) the extent of injuries, if any;

(F) an assessment of actual or potential hazards to the environment and human health or safety outside the facility, where this is applicable; and

(G) estimated quantity and disposition of recovered material that resulted from the incident.

(b) The executive director may waive the five-day written notice requirement under §305.125(9) of this title (relating to Standard Permit Conditions) in favor of a written report pursuant to this section within 15 days.

Source: The provisions of this §305.145 adopted to be effective June 19, 1986, 11 TexReg 2597; amended to be effective April 8, 1987, 12 TexReg 998.

§ 305.147. Monitoring of Commercial Hazardous Waste Management Facility Operations

Any issued, amended, modified, transferred, extended, or renewed commercial hazardous waste management facility permit shall include the following requirements.

(1) Within the first year after commission action on the permit the facility owner or operator shall provide notice to affected persons of intent to have an independent annual environmental audit of the facility performed. The notice shall be issued in accordance with the following procedure.

(A) The notice shall state the names of at least three independent inspectors nominated by the facility owner or operator to perform the environmental audit and shall be published in the newspaper of the largest general circulation that is published in the county in which the facility is located and all adjacent counties or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The facility owner or operator shall not nominate an inspector who is employed or who has been employed by the facility.

(B) The notice shall announce a meeting time and place, to be located near the facility location, be held within 15 days of the published

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notice in order for the facility to receive comments from and allow for participation by interested affected persons in the selection of the independent inspector. The interested affected persons may either agree to one of the nominated independent inspectors or nominate other independent inspectors if they do not approve of the nominee list. The selection of the independent inspector shall be agreed to by the facility owner or operator and the interested affected persons no later than 30 days from the date of the meeting. The name of the selected independent inspector shall be submitted to the commission no later than 15 days from the date of selection for the commission's approval. The commission shall approve the independent inspector after it has determined that the independent inspector has the necessary expertise to perform the audit and does not have a conflict of interest with any of the parties involved in the inspector selection.

(C) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

- (i) the facility owner's or operator's name;
- (ii) the location of the facility;
- (iii) the facility permit number;
- (iv) the time and date of the scheduled annual environmental audit;
- (v) the names of at least three nominated independent inspectors;
- (vi) the date and time and location of the selection meeting; and
- (vii) the name and telephone number of a facility contact person.

(D) The facility owner or operator shall provide a copy of the published notice to local jurisdictions where the facility is located.

(E) The facility owner or operator shall provide the commission with an affidavit including a newspaper tear sheet of the published notice and sworn statement of the editor or publisher certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(2) If the facility owner or operator and interested affected persons cannot agree on the selection of an independent inspector within the time

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frame specified in paragraph (1)(B) of this section, the commission shall select an independent inspector. The commission's selection, however, shall not be limited to either the facility owner or operator's nominee list or the interested affected persons' nominee list. The commission shall take steps necessary to assure that the independent inspector or entity selected to perform the audit has the necessary expertise to perform the audit, is not a business competitor of the facility, and does not have a conflict of interest with any of the parties involved in the inspector selection.

(3) The facility owner or operator shall pay the cost of notice required to be provided under this section.

(4) The facility owner or operator shall be responsible for the costs of an independent annual environmental audit. The facility owner or operator shall also maintain responsibility for procuring the selected independent inspector. The commission shall not be a party to such procurement nor warrant the workmanship of the selected inspector.

(5) The facility owner or operator shall submit the results of an independent annual environmental audit in writing to the executive director and must mail a copy of the audit to those affected persons who participated in the selection of the independent inspector.

(6) The scope of the independent annual environmental audit may encompass any and all provisions of environmental permits required for the facility and all relevant statutes and regulations regarding the management of the facility.

(7) The facility is not required to perform the annual independent environmental audit if the facility does not receive any comments from affected persons. If the facility performs the independent audit despite lack of response, the facility must obtain the commission's approval of the selected independent inspector prior to the audit.

(8) The facility shall provide for fence line and ambient air quality monitoring if and as required by the commission.

Source: The provisions of this §305.147 adopted to be effective November 7, 1991, 16 TexReg 6051.

§ 305.148. Impact of New Hazardous Waste Management Facilities on Local Land Use

Based on its assessment of an application for a new hazardous waste management facility permit, in accordance with §335.180 of this title (relating to

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Impact of New Hazardous Waste Management Facilities on Local Land Use), the commission may impose permit conditions deemed to be necessary to minimize or mitigate detrimental impacts on local land use.

Source: The provisions of this §305.148 adopted to be effective November 7, 1991, 16 TexReg 6051.

§ 305.149. Time Limitation for Construction of Commercial Hazardous Waste Management Units

(a) Applicability. This section applies to facilities which provide commercial capacity for the storage, processing or disposal of hazardous waste and for which permit applications, Class 3 permit modification requests or major permit amendment requests are filed after the effective date of this rule.

(b) Schedule for construction of commercial hazardous waste management units.

(1) The facility owner or operator shall construct all permitted units within two years of final administrative and judicial disposition of the permit, modification or amendment referenced in subsection (a) of this section. Within 90 days after the end of the two-year construction period time limit, the facility owner or operator shall certify to the executive director that the unit has been constructed in accordance with applicable permit provisions.

(2) A one-time six-month extension to the two-year construction period time limit may be requested as a Class 2 permit modification. All modification requests and subsequent procedures must comply with applicable provisions of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request. The request must be made within the initial two-year period and, if granted, the six-month extension shall begin at the end of the initial two-year construction period time limit specified under paragraph (1) of this subsection. Construction of the unit is authorized under this subsection until the commission takes final action on the modification request; however, in no event shall authorization continue under this subsection beyond six months following the end of the initial two-year construction period specified under paragraph (1) of this subsection. Within 90 days of the end of the authorized extension period, the facility owner or operator shall certify to the executive

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director that the accordance with a

(3) Extensions for any extension to schedule authorize permit modification this subsection, shall permit modification procedures must sions of §305.69.

Waste Permit Modification Permittee) and must statutory or regulatory effect prior to final the modification request.

(A) Extension graph shall be authorized under subsection. Cor rized under this sion takes final request.

(B) The com quests made un submitted after ods authorized this subsection.

(4) Under circ layed or staged u than that specific subsection, justifi schedule shall b application. The s part of the permi commission. Reo proved schedule s erred by the appro Class 2 or Clas pursuant to §305 shall be determin requested. An ex less shall be a Cl sion request of g Class 3 modific subsequent proc cable provisions any applicable ments which tak tive disposition

(c) Authorization agement of hazar ized under any of

(1) the permi

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Management Facility Commission may be necessary to impacts on local

adopted to be effective

or Construction of Hazardous Waste Units

applies to facilities for the storage, hazardous waste and for Class 3 permit modification requests of this rule.

of commercial haz-

operator shall construct within two years of final disposition of the permit referenced in within 90 days after construction period time operator shall certify to the unit has been applicable permit

extension to the two-year limit may be re-modification. All subsequent procedures provisions of §305.69 Waste Permit Modification (Permittee) and must statutory or regulatory effect prior to final the modification made within the granted, the six-month at the end of the period time limit of this subsection. authorized under this takes final action however, in no event der this subsection e-end of the initial ecified under para- thin 90 days of the period, the facility y to the executive

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director that the unit has been constructed in accordance with applicable permit provisions.

(3) Extensions for greater than six months, or any extension to the construction period time schedule authorized under an approved Class 2 permit modification pursuant to paragraph (2) of this subsection, shall be requested as a Class 3 permit modification. All requests and subsequent procedures must comply with applicable provisions of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.

(A) Extension requests made under this paragraph shall be submitted during the periods authorized under paragraph (1) or (2) of this subsection. Construction of the unit is authorized under this subsection until the commission takes final action on the modification request.

(B) The commission shall not consider requests made under this paragraph which are submitted after the expiration of the time periods authorized under paragraph (1) or (2) of this subsection.

(4) Under circumstances which require a delayed or staged unit construction schedule longer than that specified under paragraph (1) of this subsection, justification for the proposed extended schedule shall be submitted with the permit application. The submitted schedule shall become part of the permit only upon the approval of the commission. Requests for changes to the approved schedule submitted during the period covered by the approved schedule shall comply with Class 2 or Class 3 permit modification rules, pursuant to §305.69. The class of the modification shall be determined by the length of the extension requested. An extension request of six months or less shall be a Class 2 modification and an extension request of greater than six months shall be a Class 3 modification request. All requests and subsequent procedures must comply with applicable provisions of §305.69 and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.

(c) Authorization status. Unit construction or management of hazardous waste in a unit is not authorized under any of the following conditions:

(1) the permittee has not constructed the unit

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within the time period specified under subsection (b)(1) of this section and:

(A) the permittee does not submit a modification request as specified in subsection (b)(2) or (3) of this section; or

(B) the commission has denied a request for an extension under subsection (b)(2) or (3) of this section and the construction period time limit specified in subsection (b)(1) or (2) of this section has expired;

(2) the unit has not been constructed within the time period specified in the permit as per subsection (b)(4) of this section and:

(A) the permittee does not submit a modification request as specified in subsection (b)(4) of this section; or

(B) the commission has denied a request for an extension under subsection (b)(4) of this section and the construction period time limit specified in the permit has expired.

Source: The provisions of this §305.149 adopted to be effective November 23, 1994, 19 TexReg 8863.

§ 305.150. Incorporation of References

When used in this chapter (relating to Consolidated Permits), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended and adopted in the Code of Federal Regulations through June 2, 1994, at 59 FedReg 28484.

Source: The provisions of this §305.150 adopted to be effective November 20, 1996, 21 TexReg 10982.

SUBCHAPTER H. ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS

§ 305.151. Applicability

Unless stated otherwise, the following conditions apply to all Class I, Class III, and Class V injection well permits and shall be incorporated into the permit expressly or by reference. These conditions are in addition to those set forth in §§305.121-305.128 of this title (relating to Permit Characteristics and Conditions).

Source: The provisions of this §305.151 adopted to be effective June 19, 1986, 11 TexReg 2598; amended to be effective February 11, 1997, 22 TexReg 1169.

§ 305.152. Corrective Action

For Class I and III wells only:

(1) For wells within the area of review which are inadequately constructed, completed, or abandoned, and which as a result of the injection

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activities may cause the pollution of fresh water, the commission shall prescribe or incorporate into the permit conditions requiring corrective action adequate to prevent such pollution. Corrective action will be required unless the owner or operator demonstrates to the executive director that, despite the owner or operator's best efforts, he is unable to obtain the necessary permission to undertake such action.

(2) The criteria of §331.44 of this title (relating to Corrective Action Standards) will be used to determine adequacy.

(3) A permit issued for an existing injection well requiring corrective action shall include a compliance schedule in compliance with §305.127(3)(E) of this title (relating to Conditions To Be Determined for Individual Permits) prescribing the time within which corrective action must be completed.

(4) As part of the corrective action plan, the commission may impose an injection pressure limitation that does not cause the pressure in the injection zone to exceed hydrostatic pressure in those wells described in paragraph (1) of this section, which condition shall expire upon completion of all corrective action measures.

(5) Action prescribed by a corrective action plan for new wells or new areas must be completed to the satisfaction of the executive director before operation of the well begins.

(6) If additional information is submitted or discovered, after an authorization for injection has been granted, that a well within the area of review might pose a hazard to a freshwater aquifer, the commission may prescribe a corrective action plan and compliance schedule as a condition for continued injection activities.

Source: The provisions of this §305.152 adopted to be effective June 19, 1986, 11 TexReg 2598; amended to be effective February 11, 1997, 22 TexReg 1169.

§ 305.154. Standards

(a) In addition to other standard permit conditions listed elsewhere in this chapter, the following conditions and other applicable standards listed in Chapter 331 of this title (relating to Underground Injection Control) shall be incorporated into each permit expressly or by reference to this chapter. The commission may impose stricter standards where appropriate.

(1) Construction requirements. Section 331.62 and §331.82 of this title (relating to Construction Standards; Construction Requirements).

(2) Compliance schedule. See §305.127(3)(E) of this title (relating to Schedule of Compliance).

(3) Construction plans. Changes in construction plans shall be approved under §331.45 of this title (relating to Executive Director Approval of Construction and Completion), or, by minor modification according to §305.72 of this title (relating to UIC Permit Modifications at the Request of the Permittee).

(4) Commencing operations. Commencement of injection operations before approval by the executive director of construction and completion is a violation of the permit and may be considered grounds for revocation or suspension of the permit, and for enforcement action. Except for new wells authorized by an area permit under subsection (b) of this title (relating to Standards), a new injection well may not commence injection until construction is complete, and:

(A) the permittee has submitted notice of completion of construction to the Director; and

(B) the executive director has inspected or otherwise reviewed the new injection well and finds it complies with the conditions of the permit; or

(C) the permittee has not received notice from the executive director of intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in subparagraph (A) of this paragraph, in which case prior inspection or review is waived and the permittee may commence injection. The executive director shall include in the notice a reasonable time period in which he shall inspect the well.

(D) for Class I wells, submission of the completion report required by §331.65(a)(1) of this title (relating to Monitoring Requirements) shall constitute the notice required in subparagraph (A) of this paragraph.

(5) Operating requirements. Section 331.63 of this title (relating to Operating Requirements) and §331.83 of this title (relating to Operating Requirements).

(6) Monitoring and reporting. All permits shall specify requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring. Reporting shall be no less frequent than specified in the appropriate sections of Chapter 331 of this title (relating to Underground

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Injection Control. this title (relating to Reporting Requirements) of this title (relating to Reporting Requirements) chapter F of this Class III Well Proc

(7) Closure. The executive director may require an injection well to be closed for a period of two years after the well is closed the well in plan unless:

(A) notice is given to the owner; and

(B) actions are taken to ensure that the well is satisfactory to the owner or operator. The well will not endanger drinking water. The temporary abandonment procedures shall include the necessary technical requirements and the executive director shall approve the plan.

(8) Corrective action. Section 331.44 of this title (relating to Standards) and §331.83 of this title (relating to Corrective Action).

(9) Financial assurance. The permittee is required to provide financial responsibility, including a bond, plug, and abandonment operation in a manner approved by the executive director. The permittee shall provide such financial responsibility to the executive director by the submission of adequate assurance or other material to the executive director.

(10) Post-closure. Section 331.63 of this title (relating to Operating Requirements).

(11) Liability. The permittee of hazardous waste injection shall maintain sufficient financial responsibility to ensure that the well is properly closed and that the well is not a source of contamination or will otherwise be a source of contamination in lieu of public insurance policy required by the regulations of the executive director proposed pre-injection.

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§305.127(3)(E) of the Commission's Rules of Compliance). Changes in construction under §331.45 of this title require Director Approval of, or by minor modification of this title (relating to the Request of the

s. Commencement of construction requires approval by the Commission and completion may be considered a suspension of the permit. Except for new permits under subchapter F (Standards), a new permit is required for a new injection well until

submitted notice of construction to the Director; and the Commission has inspected or approved the injection well and the conditions of the

received notice from the permittee to inspect or approve the injection well within the time specified in the notice in subparagraph (A) of this title. The executive director may, at his or her discretion, inspect the well. Completion of the permit under §331.45(a)(1) of this title (relating to the Requirements) shall constitute compliance with subparagraph (A) of this title.

Section 331.63 of this title (relating to Requirements) and the Commission's Rules of Compliance for Operating

g. All permits shall require the proper use, when appropriate, of the methods including sufficient to yield of the monitored appropriate, continuous and no less frequent sections of Chapter 331 of the Texas Administrative Code Under the Texas Commission on

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Injection Control. Section 331.64 and §331.65 of this title (relating to Monitoring Requirements; Reporting Requirements); §331.84 and §331.85 of this title (relating to Monitoring Requirements; Reporting Requirements); or Chapter 331, Subchapter F of this title (relating to Standards for Class III Well Production Area Development).

(7) Closure. The permittee shall notify the executive director and obtain approval before plugging an injection well. After failing to operate for a period of two years, the owner or operator shall close the well in accordance with an approved plan unless:

(A) notice is provided to the executive director; and

(B) actions and procedures are described, satisfactory to the executive director, that the owner or operator will take to ensure that the well will not endanger underground sources of drinking water (USDWs) during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable, unless waived by the executive director.

(8) Corrective action requirements. Section 331.44 of this title (relating to Corrective Action Standards) and §305.152 of this title (relating to Corrective Action).

(9) Financial assurance requirements. The permittee is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the executive director. The permittee shall show evidence of such financial responsibility to the executive director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the executive director.

(10) Post-closure requirements. Section 331.68 of this title (relating to Post-Closure Standards).

(11) Liability insurance requirements. The permittee of hazardous waste injection wells shall maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed

30 TAC § 305.155

"sufficient" under this paragraph if the policy covers the injection well and is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

(b) Area permits shall specify:

(1) The area within which underground injections are authorized; and

(2) The requirements for construction, monitoring, reporting, operation, and abandonment for all wells authorized by the permit.

(3) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(A) The permittee notifies the executive director at such time as the permit requires;

(B) The additional well satisfies the criteria in §331.7(b) of this title (relating to Permit Requirements) and meets the requirements specified in the permit under paragraphs (1) and (2) of this subsection; and

(C) The cumulative effects of drilling and operation of additional injection wells are considered by the executive director during evaluation of the area permit application and are acceptable to the executive director.

(4) If the executive director determines that any well constructed pursuant to paragraph (3) of this subsection does not satisfy any of the requirements of this subsection, the executive director may amend, terminate, or take enforcement action. If the executive director determines that cumulative effects are unacceptable, the permit may be amended under §305.62 of this title (relating to Amendment).

Source: The provisions of this §305.154 adopted to be effective June 19, 1986, 11 TexReg 2598; amended to be effective July 5, 1989, 14 TexReg 3046; amended to be effective February 11, 1997, 22 TexReg 1169.

§ 305.155. Production Area Authorization

A production area authorization shall include for each production area:

- (1) a mine plan;
- (2) a restoration table;
- (3) a baseline water quality table;
- (4) control parameters upper limits;
- (5) monitor well locations; and
- (6) any special provisions determined appropriate by the commission.

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Source: The provisions of this §305.155 adopted to be effective June 19, 1986, 11 TexReg 2598.

§ 305.156. Hazardous Waste

For a hazardous waste disposal well, the surface facilities shall comply with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). The surface facilities for an injection well which disposes of hazardous waste are hazardous waste management facilities.

Source: The provisions of this §305.156 adopted to be effective June 19, 1986, 11 TexReg 2598.

§ 305.157. Record Retention

The permittee shall retain all records concerning the nature and composition of injected fluids until five years after completion of plugging and abandonment procedures for the well. The executive director may require a permittee to submit copies of the records at any time prior to conclusion of the retention period.

Source: The provisions of this §305.157 adopted to be effective June 19, 1986, 11 TexReg 2598.

§ 305.158. Additional Conditions

The commission shall impose any other condition necessary to prevent the pollution of fresh water.

Source: The provisions of this §305.158 adopted to be effective June 19, 1986, 11 TexReg 2598.

§ 305.159. Additional Class I Conditions

A permit for a Class I well shall include expressly or by reference the following conditions.

(1) A sign shall be posted at the well site which shall show the name of the company, company well number and commission permit number. The sign and identification shall be in the English language, clearly legible, and shall be in numbers and letters at least one inch high.

(2) An all-weather road shall be installed and maintained to allow access to the injection well and related facilities.

(3) The wellhead and associated facilities shall be painted, if appropriate, and maintained in good working order without leaks.

Source: The provisions of this §305.159 adopted to be effective June 19, 1986, 11 TexReg 2598.

SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

§ 305.171. Determining Operational Readiness

For the purposes of determining operational readiness following completion of physical construction

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of a hazardous waste incinerator, the commission shall establish permit conditions including, but not limited to, specification of allowable waste feeds and operating conditions, in a permit for a new hazardous waste incinerator. These permit conditions will be effective for a minimum required time, not to exceed 720 hours operating time for treatment of hazardous waste, to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn. The commission may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension pursuant to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(1) Applicant must submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of 40 Code of Federal Regulations §284.343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in 40 Code of Federal Regulations §264.345.

(2) The executive director shall review this statement and any other relevant information submitted with Part B of the permit application and shall specify requirements for this period sufficient to meet the performance standards of 40 Code of Federal Regulations §264.343, based on the executive director's engineering judgment.

Source: The provisions of this §305.171 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

§ 305.172. Determining Feasibility of Compliance and Adequate Operating Conditions

For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §264.343 and of determining adequate operating conditions under 40 CFR §264.345, the commission shall establish conditions in the permit for a new hazardous waste incinerator, to be effective during the trial burn.

(1) Applicant shall propose a trial burn plan, prepared under paragraph (2) of this section, with Part B of the permit application.

(2) The trial burn plan shall include the following information:

- (A) an analysis of each waste or mixture of wastes to be burned which includes:
- heat value of the waste in the form and

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composition in

(ii) viscosity of physical for

(iii) an identification of organic constituents to be burned, not analyzed for Appendix VII. be expected to be identified, and established. The analytical methods for Evaluation of Chemical Methods, as incorporated in §260.11 and incorporated into the equivalent; and

(iv) an appropriate hazardous constituent within the physical methods. Evaluating Safety Methods," incorporated by reference in §305.150 of the Regulation of Refractory (B) a detailed incinerator for including:

(i) manufacturer of incinerator

(ii) type of

(iii) linear unit, including combustion

(iv) description (type/feed);

(v) capacity

(vi) description of cut-off system

(vii) stack control equipment

(viii) nozzles

(ix) construction

(x) location, pressure, control devices;

(C) a detailed

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or, the commission including, but not ble waste feeds and t for a new hazard-mit conditions will quired time, not to ie for treatment of cinerator to a point it to conduct a trial nd the duration of r up to 720 addi-he applicant when may be modified to §305.69 of this title Modification at the

a statement, with on, which suggests rate in compliance rds of 40 Code of during this period. e, at a minimum, ts, waste feed rates, s identified in 40 §64.345.

ll review this state-formation submit-tication and shall eriod sufficient to rds of 40 Code of ased on the execu-ment.

adopted to be effective be effective October 29,

ibility of Compli- quate Operating

ing feasibility of e standards of 40 §264.343 and of conditions under on shall establish / hazardous waste the trial burn.

a trial burn plan, f this section, with 1.

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composition in which it will be burned;

(ii) viscosity (if applicable), or description of physical form of the waste;

(iii) an identification of any hazardous organic constituents listed in 40 CFR Part 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, which reasonably would not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for their exclusion established. The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent; and

(iv) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §305.150 of this title (relating to Incorporation of References), or their equivalent;

(B) a detailed engineering description of the incinerator for which the permit is sought, including:

(i) manufacturer's name and model number of incinerator (if available);

(ii) type of incinerator;

(iii) linear dimensions of the incinerator unit, including the cross-sectional area of combustion chamber;

(iv) description of the auxiliary fuel system (type/feed);

(v) capacity of prime mover;

(vi) description of automatic waste feed cut-off system(s);

(vii) stack gas monitoring and pollution control equipment;

(viii) nozzle and burner design;

(ix) construction materials; and

(x) location and description of temperature, pressure, and flow indicating and control devices;

(C) a detailed description of sampling and

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monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

(D) a detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the decision under paragraph (5) of this section;

(E) a detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator;

(F) a description of, and planned operating conditions for, any emission control equipment which will be used;

(G) procedures for rapidly stopping the waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction; and

(H) such other information as the executive director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (5) of this section.

(3) The executive director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section.

(4) Based on the waste analysis data in the trial burn plan, the commission shall specify as trial principal organic hazardous constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the commission based on an estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and for wastes listed in 40 CFR Part 261, Subpart D, the hazardous waste organic constituent or constituents identified in Appendix VII of that part as the basis for listing.

(5) The commission shall approve a trial burn plan if it finds that:

(A) the trial burn is likely to determine whether the incinerator performance standard required

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by 40 CFR §264.343 can be met;

(B) the trial burn itself will not present an imminent hazard to human health or safety or the environment;

(C) the trial burn will help the commission to determine the operating requirements to be specified (in the permit) according to 40 CFR §264.345; and

(D) the information sought in subparagraphs (A) and (C) of this paragraph cannot reasonably be developed through other means.

(6) The chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 Code of Federal Regulations §270.62(b)(6)(i)-(ii), as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

(7) During each approved trial burn (or as soon after the burn as practicable), the applicant must make the following determinations:

(A) a quantitative analysis of the trial POHCs in the waste feed to the incinerator;

(B) a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O₂) and hydrogen chloride (HCl);

(C) a quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;

(D) a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 CFR §264.343(a);

(E) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with 40 CFR §264.343(b);

(F) a computation of particulate emissions, in accordance with 40 CFR §264.343(c);

(G) an identification of sources of fugitive emissions and their means of control;

(H) a measurement of average, maximum,

and minimum temperatures and combustion gas velocity;

(I) a continuous measurement of carbon monoxide (CO) in the exhaust gas; and

(J) such other information as the executive director may specify as necessary to ensure that the trial burn will determine the compliance with the performance standards in 40 CFR §264.343 and to establish the operating conditions required by 40 CFR §264.345 as necessary to meet those performance standards.

(8) The applicant must submit to the executive director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in paragraph (7) of this section. This submission shall be made within 90 days of completion of the trial burn, or later with the prior approval of the executive director.

(9) All data collected during any trial burn shall be submitted to the executive director immediately following the completion of the trial burn.

(10) All submissions required by this section shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports).

(11) Based on the results of the trial burn, the commission or the executive director, as appropriate, subject to §50.33 of this title (relating to Executive Director Action on Application), shall set the operating requirements in the final permit according to 40 CFR §264.345. The permit amendment or modification shall proceed according to §305.62 of this title (relating to Amendment) or §305.69(c) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

Source: The provisions of this §305.172 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015; amended to be effective November 20, 1996, 21 TexReg 10982; amended to be effective August 8, 1999, 24 TexReg 5879

§ 305.173. Operation Prior to Final Amendment of the Permit

For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final amendment of the permit conditions to reflect the trial burn results, the commission may establish permit conditions, including, but not limited to, allowable waste feeds and

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operating conditions of 40 Code of Federal Regulations in the permit for a new trial burn. These permit conditions shall include minimum time requirements, data computation, and trial burn results by the applicant facility permit by the

(1) Applicants: Part B of the permit shall specify the conditions necessary for the performance of the trial burn period. This shall include, but not be limited to, minimum, restricted feed rates, and trial burn results as required in 40 Code of Federal Regulations.

(2) The executive director and any other person authorized to act with Part B of the permit shall specify those conditions most likely to meet the requirements of 40 Code of Federal Regulations on the executive director's intent.

Source: The provisions of this §305.173 adopted to be effective June 19, 1986, 11 TexReg 2600

§ 305.174. Existing Hazardous Waste Incinerators

For the purpose of determining compliance with the Code of Federal Regulations, existing hazardous waste incinerators shall submit a trial burn in accordance with §305.172(2)-(5) and determine Feasible Operating Conditions. The chief clerk shall determine the executive director's intention in accordance with the provisions of §305.172(2)-(5) (Feasible Operating Conditions) include: the name and contact person at the facility, the number of a contact person, the location where the trial burn is conducted, supporting documents, and a schedule of trial burn results prior to permit issuance and time schedule for a

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operating conditions sufficient to meet the require-
ments of 40 Code of Federal Regulations §264.345,
in the permit for a new hazardous waste incinerator.
These permit conditions will be effective for the
minimum time required to complete sample analy-
sis, data computation, and submission of the trial
burn results by the applicant, and amendment of the
facility permit by the commission.

(1) Applicants shall submit a statement with
Part B of the permit application which identifies
the conditions necessary to operate in compliance
with the performance standards of 40 Code of
Federal Regulations §264.343, during the trial
burn period. This statement shall include, at a
minimum, restrictions on waste constituents, waste
feed rates, and the operating parameters identi-
fied in 40 Code of Federal Regulations §264.345.

(2) The executive director shall review this state-
ment and any other relevant information submit-
ted with Part B of the permit application, and
shall specify those requirements for this period
most likely to meet the performance standards of
40 Code of Federal Regulations §264.343, based
on the executive director's engineering judgment.

Source: The provisions of this §305.173 adopted to be effective
June 19, 1986, 11 TexReg 2600.

§ 305.174. Existing Incinerators

For the purposes of determining feasibility of
compliance with the performance standards of 40
Code of Federal Regulations (CFR) §264.343 and of
determining adequate operating conditions under
40 CFR §264.345, the applicant for a permit for an
existing hazardous waste incinerator must prepare
and submit a trial burn plan and perform a trial
burn in accordance with 40 CFR §270.19(b) and
§305.172(2)-(5) and (7)-(10) of this title (relating to
Determining Feasibility of Compliance and Ade-
quate Operating Conditions) or, instead, submit
other information as specified in 40 CFR §270.19(c).
The chief clerk shall provide notice of the executive
director's intention to approve the trial burn, in
accordance with the timing and distribution require-
ments of §305.172(6) of this title (relating to Determining
Feasibility of Compliance and Adequate Operating
Conditions). The contents of the notice must
include: the name and telephone number of a con-
tact person at the facility; the name and telephone
number of a contact office at the permitting agency;
the location where the trial burn plan and any
supporting documents can be reviewed and copied;
and a schedule of the activities that are required
prior to permit issuance, including the anticipated
time schedule for approval of the plan and the time

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period during which the trial burn would be
conducted. Applicants submitting information speci-
fied in 40 CFR §270.19(a) are exempt from compli-
ance with 40 CFR §§264.343 and 264.345 and
therefore, are exempt from the requirement to con-
duct a trial burn. Applicants who submit trial burn
plans and receive approval before submission of a
permit application shall complete the trial burn and
submit the results, specified in §305.172 of this title
(relating to Determining Feasibility of Compliance
and Adequate Operating Conditions) with Part B of
the permit application. If completion of this process
conflicts with the date set for submission of the Part
B application, the applicant shall contact the execu-
tive director to establish a later date for submission
of the Part B application or the trial burn results.
Trial burn results must be submitted prior to issua-
nce of the permit. When the applicant submits a
trial burn plan with Part B of the permit application,
the executive director will specify a time period
prior to permit issuance in which the trial burn must
be conducted and the results submitted.

Source: The provisions of this §305.174 adopted to be effective
June 19, 1986, 11 TexReg 2600; amended to be effective October 29,
1990, 15 TexReg 6015; amended to be effective August 8, 1999, 24
TexReg 5879

SUBCHAPTER J. PERMITS FOR LAND TREATMENT DEMONSTRATIONS USING FIELD TESTS OR LABORATORY ANALYSES

§ 305.181. Treatment Demonstration Permit

For the purpose of allowing an owner or operator
to meet the treatment demonstration requirements
of 40 Code of Federal Regulations §264.272, the
commission may issue a treatment demonstration
permit. The permit shall contain only those require-
ments necessary to meet the standards in 40 Code of
Federal Regulations §264.272(c). The permit may be
issued either as a treatment or disposal permit
covering only the field test or laboratory analyses, or
as a two phase facility permit covering the field tests
or laboratory analyses, and the design, construction,
operation, and maintenance of the land treatment
unit.

(1) The commission may issue a two-phase fa-
cility permit if it finds that, based on information
submitted in Part B of the application, substantial
information, although incomplete or inconclusive,
already exists upon which to base the issuance of
a facility permit.

(2) If the commission finds that insufficient
information exists upon which to establish permit

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conditions to attempt to provide for compliance with all of the requirements relating to land treatment, the commission may issue a treatment demonstration permit covering only the field test or laboratory analyses.

Source: The provisions of this §305.181 adopted to be effective June 19, 1986, 11 TexReg 2600.

§ 305.182. Two-Phase Facility Permit

If the commission finds that a phased permit may be issued, the commission shall establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions shall include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the commission finds may be necessary under 40 Code of Federal Regulations §264.272(c). The commission shall include conditions in the second phase of the facility permit to attempt to meet all requirements pertaining to unit design, construction, operation, and maintenance of land treatment facilities. The commission shall establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(1) The first phase of the permit shall be effective as provided in Texas Civil Statutes, Article 6252-13, and the rules of the commission.

(2) The second phase of the permit shall be effective as provided in §305.184 of this title (relating to Permit Amendment).

Source: The provisions of this §305.182 adopted to be effective June 19, 1986, 11 TexReg 2600.

§ 305.183. Certification

When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he shall submit to the executive director a certification, signed by a person authorized to sign a permit application or report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports), that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the

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executive director approves a later date.

Source: The provisions of this §305.183 adopted to be effective June 19, 1986, 11 TexReg 2600.

§ 305.184. Permit Amendment or Modification

If the commission determines that the results of the field tests or laboratory analyses meet the requirements of 40 Code of Federal Regulations §264.272, it shall amend the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with requirements applicable to land treatment, based upon the results of the field tests or laboratory analyses.

(1) This permit amendment may proceed under §305.62 of this title (relating to Amendment) or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), provided any such change is minor, or otherwise will proceed as an amendment under §305.62(d) of this title (relating to Amendment). If such modifications or amendments are necessary, the second phase of the permit will become effective only after those modifications or amendments have been made.

(2) If not amendments of the second phase of the permit are not necessary, the commission shall give notice in accordance with §305.96(b) of this title (relating to Action on Application for Amendment or Modification). The second phase of the permit then will become effective as specified in Texas Civil Statutes, Article 6252-13, and the rules of the commission.

Source: The provisions of this §305.184 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

SUBCHAPTER K. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS

§ 305.191. Applicability and Scope

The commission may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 40 Code of Federal Regulations Parts 264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health or safety and the environment. Such permits:

(1) shall provide for the construction of such facilities as necessary, and for operation of the

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facility for not less than one year, or renewed as provided in §305.192 (relating to Renewal);

(2) shall provide for the facility of or for the hazardous waste treatment facility necessary for purpose and performance of the process and the process on, human health and the environment; and

(3) shall include such conditions as the commission deems necessary for health and safety and the environment, not limited to, relating to, operation, financing, and remedial action, as the commission deems necessary, testing with respect to, and providing of, such information as the director.

Source: The provisions of this §305.191 adopted to be effective June 19, 1986, 11 TexReg 2600.

§ 305.192. Waiver

For the purpose of this chapter, a permit under this chapter may, consistent with the health and safety and the permit application requirements of this chapter, be modified or waived, and the financial responsibility procedures regarding

Source: The provisions of this §305.192 adopted to be effective June 19, 1986, 11 TexReg 2600; amended to be effective October 29, 1990, 15 TexReg 6015.

§ 305.193. Termination

The commission may terminate a permit at any time that termination is in the interest of health and safety and the environment.

Source: The provisions of this §305.193 adopted to be effective June 19, 1986, 11 TexReg 2600.

§ 305.194. Renewal

Any permit issued under this chapter shall be renewed not more than one year before the expiration of the permit.

Source: The provisions of this §305.194 adopted to be effective June 19, 1986, 11 TexReg 2600.

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facility for not longer than one year unless re-
newed as provided in §305.194 of this title (relat-
ing to Renewal);

(2) shall provide for the receipt and treatment
by the facility of only those types and quantities of
hazardous waste which the commission deems
necessary for purposes of determining the efficacy
and performance capabilities of the technology or
process and the effects of such technology or
process on human health and safety and the
environment; and

(3) shall include such requirements as the com-
mission deems necessary to protect human health
and safety and the environment, including, but
not limited to, requirements regarding monitor-
ing, operation, financial responsibility closure,
and remedial action, and such other requirements
as the commission deems necessary regarding
testing with respect to the operation of the facility
and providing of information to the executive
director.

Source: The provisions of this §305.191 adopted to be effective
June 19, 1986, 11 TexReg 2601.

§ 305.192. Waiver of Requirements

For the purpose of expediting review and issuance
of permits under this subchapter, the commission
may, consistent with the protection of human health
and safety and the environment, modify or waive
permit application and permit issuance require-
ments of this chapter, except that there may be no
modification or waiver of regulations regarding fi-
nancial responsibility (including insurance) or of
procedures regarding public participation.

Source: The provisions of this §305.192 adopted to be effective
June 19, 1986, 11 TexReg 2601; amended to be effective August 30,
1988, 13 TexReg 4071.

§ 305.193. Termination

The commission may order an immediate termi-
nation of all operations at a facility subject to this
subchapter at any time the commission determines
that termination is necessary to protect human
health and safety and the environment.

Source: The provisions of this §305.193 adopted to be effective
June 19, 1986, 11 TexReg 2601.

§ 305.194. Renewal

Any permit issued under this subchapter may be
renewed not more than three times. Each such
renewal shall be for a period of not more than one
year.

Source: The provisions of this §305.194 adopted to be effective
June 19, 1986, 11 TexReg 2601.

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SUBCHAPTER L. GROUNDWATER COMPLIANCE PLAN

§ 305.401. Compliance Plan

(a) In order to administer the groundwater pro-
tection requirements relating to compliance moni-
toring and corrective action for facilities that store,
process, or dispose of hazardous waste in surface
impoundments, waste piles, land treatment units, or
landfills, and the requirements of §335.167 of this
title (relating to Corrective Action for Solid Waste
Management Units), the commission shall establish
a compliance plan.

(b) The following rules pertaining to application,
and notice and hearing shall be applicable in pro-
ceedings to establish the plan: §39.3 of this title
(relating to Purpose); §39.5 of this title (relating to
General Provisions); §39.7 of this title (relating to
Mailing Lists); §39.11 of this title (relating to Text of
Public Notice); §39.13 of this title (relating to Mailed
Notice); §39.17 of this title (relating to Notice of
Minor Amendment); §39.21 of this title (relating to
Notice of Commission Meeting to Evaluate a Hear-
ing Request on an Application); §39.23 of this title
(relating to Notice of Hearing Held by SOAH, In-
cluding Hearing on Hearing Requests); §39.25 of
this title (relating to Notice of Contested Enforce-
ment Case Hearing); §39.103 of this title (relating to
Application for Industrial or Hazardous Waste Fa-
cility Permit); §39.105 of this title (relating to Appli-
cation for a Class 1 Modification of an Industrial
Solid Waste, Hazardous Waste, or Municipal Solid
Waste Permit); §39.107 of this title (relating to Ap-
plication for a Class 2 Modification of an Industrial
or Hazardous Waste Permit); §39.109 of this title
(relating to Application for a Class 3 Modification of
an Industrial or Hazardous Waste Permit); §50.13 of
this title (relating to Action on Application); §50.15
of this title (relating to Scope of Proceedings); §50.17
of this title (relating to Commission Actions); §55.21
of this title (relating to Requests for Contested Case
Hearings, Public Comment); Chapter 281 of this title
(relating to Applications Processing); §305.43 of this
title (relating to Who Applies); §305.44 of this title
(relating to Signatories to Applications); §305.47 of
this title (relating to Retention of Application Data);
§305.50 of this title (relating to Additional Require-
ments for an Application for a Solid Waste Permit);
§305.53 of this title (relating to Application Fees);
§305.122-§305.124 of this title (relating to Charac-
teristics of Permits; Reservation in Granting Permit;
and Acceptance of Permit, Effect); and §305.128 of
this title (relating to Signatories to Reports).

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(c) Any investigation report to establish compliance monitoring or corrective action shall contain the information specified in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(7) and (8), which are in effect as of September 9, 1987. The executive director may authorize, in writing, in advance the submittal of a proposed permit schedule for the submittal of an engineering feasibility plan as set forth in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(7), which are in effect as of September 9, 1987. The executive director may also authorize, in writing, prior to the submittal of a complete permit application, the submittal of a schedule for the information required in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(8)(iii) and (iv), as set forth in the regulations contained in 40 Code of Federal Regulations, §270.14(c)(8)(v), which are in effect as of September 9, 1987. The executive director may request information necessary to determine the appropriateness and extent of corrective action required by §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

(d) The executive director shall prepare a draft compliance plan unless the executive director recommends not to approve the plan. The draft compliance plan shall be available for public review, and notice that the executive director has prepared such a plan will be given pursuant to §305.100 of this title (relating to Notice of Application). The draft compliance plan shall be filed with the commission to be included in its consideration of the approval of a compliance plan.

(e) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft compliance plan. The executive director shall send this summary together with the draft compliance plan to the applicant and, on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft compliance plan;

(2) the type and quantity of wastes, fluids, or pollutants which are being managed at the facility;

(3) a brief summary of the basis for the conditions of the draft compliance plan, including references to applicable statutory or regulatory provisions;

(4) a description of the procedures for reaching a final decision on the draft compliance plan, including procedures whereby the public may participate in the final decision; and

(5) the name and telephone number of a person in the commission to contact for additional information.

(f) The plan may be amended:

(1) when the corrective action program specified in the plan under §335.165 of this title (relating to Compliance Monitoring Program) has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable time;

(2) When the plan requires a compliance monitoring program under §335.165 of this title (relating to Compliance Monitoring Program), but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard. The sections of this chapter pertaining to major amendments shall be applicable to the foregoing amendments to the compliance plan.

(g) Whenever a facility is subject to permitting under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is further required under §§335.156-335.167 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; Corrective Action Program; and Corrective Action for Solid Waste Management Units) to conduct compliance monitoring or corrective action, processing of the permit application for the facility and the establishment of the compliance plan shall be consolidated in one proceeding.

(h) Nothing herein shall be construed to be inconsistent with the commission's authority under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §8 and §8b.

Source: The provisions of this §305.401 adopted to be effective June 19, 1986, 11 TexReg 2601; amended to be effective July 14, 1987, 12 TexReg 2102; amended to be effective July 27, 1988, 13 TexReg 3514; amended to be effective August 8, 1999, 24 TexReg 5879

SUBCHAPTER M. WASTE TREATMENT INSPECTION FEE PROGRAM

§ 305.501. Purpose

(a) It is the purpose of these sections to maintain the Waste Treatment Fee Program. Under this pro-

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gram, an annual fee holding a permit or discharge wastewater Chapter 26. All fees the purpose of supplied by the legislative commission in inspection and enforcing the Code, Chapter 26, the commission, and the provisions governing waste disposal facilities.

(b) Upon the deletion of the fee to the commission, in addition to the purpose of this section for the Texas pollutant discharge (DES) program.

Source: The provisions April 27, 1988, 13 TexReg 30, 1991, 16 TexReg 720 1994, 19 TexReg 800.

§ 305.502. Definitions

(a) Definitions. The Texas Water Code, following words and chapter, shall have the context clearly in

(1) Annual was to each permittee authorized to treat the Texas Water C

(2) Biomonitor (whole-effluent) treatment as required by an of §307.1(d) of this Statement).

(3) Commission Conservation Cor

(4) Flow limit—water discharge a permit, expressed maximum flow, a maximum.

(5) Flow—The ter discharges a pressed as an average flow per day, a maximum, excluding stormwater discharge on the sum of t

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gram, an annual fee is imposed on each permittee holding a permit or otherwise authorized to treat or discharge wastewater under the Texas Water Code, Chapter 26. All fees shall be deposited in a fund for the purpose of supplementing other funds appropriated by the legislature to pay the expenses of the commission in inspecting waste treatment facilities and enforcing the provisions of the Texas Water Code, Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities.

(b) Upon the delegation of national pollutant discharge elimination system (NPDES) permit authority to the commission, the fees shall be used, in addition to the purposes specified in subsection (a) of this section for obtaining and administering the Texas pollutant discharge elimination system (TPDES) program.

Source: The provisions of this §305.501 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective December 30, 1991, 16 TexReg 7206; amended to be effective February 14, 1994, 19 TexReg 800.

§ 305.502. Definitions and Abbreviations

(a) Definitions. The definitions contained in the Texas Water Code, §26.001, shall apply herein. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual waste treatment fee—A fee charged to each permittee holding a permit or otherwise authorized to treat or discharge wastewater under the Texas Water Code, Chapter 26.

(2) Biomonitoring—The determination of total (whole-effluent) toxicity of permitted discharges as required by and consistent with the provisions of §307.1(d) of this title (relating to General Policy Statement).

(3) Commission—The Texas Natural Resource Conservation Commission.

(4) Flow limit—The maximum amount of wastewater discharge authorized during any term of the permit, expressed as a daily average flow, a daily maximum flow, an annual average, or an annual maximum.

(5) Flow—The total by volume of all wastewater discharges authorized under a permit expressed as an average flow per day, a maximum flow per day, an annual average, or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow is based on the sum of the volumes of discharge for all

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outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow is based on the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(6) Flow volume—

(A) Type I—These wastewaters include sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters;

(B) Type II—These wastewaters include non-contact cooling water or mixed flows which contain at least 90% non-contact cooling water and not more than one million gallons per day of process wastewater.

(7) Fund—The water quality fund.

(8) Heat load parameter—The temperature limitation specified in a permit. For purposes of assessing the waste treatment fee, points are assigned according to the existence of a temperature limitation within a waste discharge permit.

(9) Inactive permit—A permit which authorizes a waste treatment facility, but where the facility itself is not yet operational or where operation has been suspended.

(10) Land application/evaporation permit—A permit which does not authorize the discharge of wastewaters into surface waters in the state. These permits include but are not limited to permits for evaporation ponds and irrigation systems.

(11) Major permit—A permit designated as a major permit, in conformance with applicable Environmental Protection Agency (EPA) guidance documents, by either EPA or the commission and subject to provisions of NPDES or TPDES permit authority, respectively.

(12) Parameter—A variable which defines a set of physical properties whose values determine the characteristics of a waste discharge. Those parameters to be considered under the waste treatment facility fee are:

(A) pollutant potential;

(B) flow volume;

(C) biochemical oxygen demand (BOD)/chemical oxygen demand (COD)/total organic carbon value;

(D) total suspended solids (TSS) value;

(E) ammonia value;

(F) heat load; and

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(G) major/minor designation.

(13) Payment—Receipt by the commission of the full amount of the annual waste treatment fee.

(14) Permit—Any permit issued by the Texas Natural Resource Conservation Commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this subchapter, the term "permit" shall include any other authorization for the treatment or discharge of wastewater, including permits by rule.

(15) Pollutant potential—A rating assigned to a permit based on:

(A) for industrial permits, the source(s) of wastewater, the Standard Industrial Classification of the facility, and the specific type of operation; or

(B) for domestic permits, an authorized flow of greater than 1.0 mgd and/or the existence of biomonitoring requirements or toxic numerical discharge limits.

(16) Report only permit—A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported but without any limitation on the volume of discharge.

(17) Stormwater outfall or permit—A permit or outfall(s) which authorizes the variable or occasional discharge of accumulated stormwater and stormwater runoff, but without any specific limitation on the volume of discharge.

(18) Toxicant numerical limit—A permit discharge limit established for any toxicant identified or otherwise defined in accordance with the provisions of §307.6 of this title (relating to Toxic Materials).

(19) Traditional pollutants—The wastewater parameters typically found in wastewater discharge permits, specifically BOD/COD/TOC, TSS, and ammonia. For purposes of assessing the waste treatment fee, points are assigned to these parameters if they are included in a permit.

(b) Abbreviations. The following abbreviations apply to these sections.

(1) BOD—Biochemical oxygen demand.

(2) COD—Chemical oxygen demand.

(3) mgd—Million gallons per day.

(4) Mg/l (milligrams per liter)—All limits measured in mg/l are converted to pounds per day

(lb/day) using the following conversion: mg/l multiplied by the flow volume in MGD multiplied by 8.34 equals lb/day.

(5) SIC—Standard Industrial Classification(s) assigned to a facility generating wastewater.

(6) TNL—Toxicant numerical limit.

(7) TOC—Total organic carbon.

(8) TSS—Total suspended solids.

Source: The provisions of this §305.502 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective December 30, 1991, 16 TexReg 7206; amended to be effective February 14, 1994, 19 TexReg 800.

§ 305.503. Fee Assessment

(a) An annual waste treatment fee is assessed against each person holding a permit or other authorization issued under the authority of the Water Code, Chapter 26. The amount of the fee is determined by specific permit parameters for which a facility is authorized as of each September 1. The maximum fee which may be assessed each permit is \$11,000, except that for Texas Pollutant Discharge Elimination Systems (TPDES) permits, the maximum fee which may be assessed is \$25,000.

(b) In assessing a fee, the commission may consider the following parameters for each permit:

(1) pollutant potential;

(2) flow volume;

(3) traditional pollutants;

(4) heat load;

(5) major/minor designation;

(6) the designated uses and ranking classification of waters affected by waste discharges; and

(7) the costs of obtaining and administering the Texas pollutant discharge elimination system program, upon delegation by the Environmental Protection Agency (EPA).

(c) Except as provided in subsections (g) and (j) of this section, the commission shall assign a point value to each of the permit parameters in subsection (b) of this section. The assigned value(s) shall be weighted according to the specific permit limits and the weighted values summed. The sum of the variable point values under subsection (f) of this section and the set values established under subsection (g) of this section are multiplied by the current fee rate under subsection (h) of this section to determine the fee to be assessed.

(d) For the purpose of fee calculation, COD and TOC are converted to BOD values and the higher value is assessed points. The conversion for TOC is: three pounds of TOC is equal to one pound of BOD

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(3:1). The conversion factor for COD is equal to one

(e) For the purpose of this section, a permit which authorizes a facility consisting of ponds or a flow of less than 1 and 90 mg/l TSS shall be assessed based on treatment secondary treatment

(f) Fee rate schedule. The fee rate schedule of this section (g) of this section shall be assessed a fee based on the permit assigned to the permit. The fee rate schedule shall determine the individual fee covered by this schedule.

(1) Pollutant potential. (A) Industrial Group II = 10 Group IV = 20 Group VI = 40

(B) Domestic. 1.0 mgd, no biological limit = 2.0 equal to 1.0 mgd toxicant numerical limit (toxicant numerical limit)

(C) Evaporation. A toxic rating of 0 for pollutant potential = ____.

(2) Flow volume. (A) Type I:

≤ .05 mgd
> .05 but ≤ .25 but ≤ 2 but ≤ 4 but ≤ 6

(B) Type II:

≤ 1 mgd
> 1 but ≤ 5 but ≤ 10 but ≤ 50 but ≤ 500 mgd

(C) Flow volume

(3) Traditional pollutants. (A) Oxygen demand are converted to BOD value is used.

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(e) For the purpose of fee calculation, a permit
which authorizes a secondary treatment system con-
sisting of ponds or lagoons at limits of 30 mg/l BOD
and 90 mg/l TSS shall be assumed to be equivalent
to 20 mg/l BOD and 20 mg/l TSS. This equivalency is
based on treatment provided by different types of
secondary treatment systems.

(f) Fee rate schedule. Except as provided in sub-
section (g) of this section, each permit shall be
assessed a fee based on the specific parameters
assigned to the permit and determined by the fol-
lowing schedule. Each permit shall be reviewed to
determine the individual values for the parameters
covered by this schedule.

(1) Pollutant potential.

(A) Industrial discharges: Group I = 2 Points;
Group II = 10 Points; Group III = 15 Points;
Group IV = 20 Points; Group V = 30 Points;
Group VI = 40 Points.

(B) Domestic discharges: Group I (less than
1.0 mgd, no biomonitoring or toxicant numeri-
cal limit) = 2 Points; Group II (greater than or
equal to 1.0 mgd and/or biomonitoring, but no
toxicant numerical limit) = 10 Points; Group III
(toxicant numerical limit) = 15 Points.

(C) Evaporation/land application permits with
a toxic rating of I will be assessed only one point
for pollutant potential. Pollutant potential points
= _____.

(2) Flow volume.

(A) Type I:

≤ .05 mgd	=	4 Points
> .05 but ≤ .25	=	7 Points
> .25 but ≤ 2	=	14 Points
> 2 but ≤ 4	=	28 Points
> 4 but ≤ 6	=	46 Points
> 6	=	72 Points

(B) Type II:

≤ 1 mgd	=	3 points
> 1 but ≤ 5	=	10 points
> 5 but ≤ 10	=	20 points
> 10 but ≤ 50	=	30 points
> 50 but ≤ 500	=	40 points
> 500 mgd	=	50 points

(C) Flow volume points = _____.

(3) Traditional pollutants.

(A) Oxygen demand. (COD and TOC limits
are converted to BOD values and the higher
value is used.)

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≤ 50 lb/day	=	1 point
> 50 but ≤ 100	=	5 points
> 100 but ≤ 250	=	10 points
> 250 but ≤ 500	=	20 points
> 500 but ≤ 750	=	30 points
> 750 but ≤ 1000	=	40 points
> 1000 but ≤ 3000	=	60 points
> 3000 lb/day	=	80 points

(B) Total suspended solids.

≤ 50 lb/day	=	1 point
> 50 but ≤ 100	=	5 points
> 100 but ≤ 250	=	10 points
> 250 but ≤ 500	=	20 points
> 500 but ≤ 750	=	30 points
> 750 but ≤ 1000	=	40 points
> 1000 but ≤ 3000	=	60 points
> 3000 lb/day	=	80 points

Total Suspended Solids Points = _____

(C) Ammonia.

≤ 250 lb/day	=	0 points
> 250 but ≤ 500	=	10 points
> 500 but ≤ 1000	=	20 points
> 1000 but ≤ 3000	=	30 points
> 3000 lb/day	=	40 points

Ammonia Points = _____

(4) Heat load: If heat loading parameter is not
present = 0 points; If heat loading parameter is
present = 10 points. Heat Load Points = _____.

(5) Major/minor designation: EPA minor facil-
ity = 0 points; EPA major facility = 10 points.
Major Facility Points = _____.

(g) Set point permits. The following fees are as-
sessed for permits to which the parameters under
subsection (f) of this section are not applicable.

(1) Evaporation/land application permits.

Industrial Discharges = 5 points

Domestic Discharges

< .1 mgd = 4 points

≥ .1 mgd = 10 points

Set Points = _____

(2) Report only or stormwater outfall(s) and
permits—12 points. Stormwater permit outfalls
for which flow discharge parameters have been
established shall be assessed a fee under subsec-
tion (f) of this section. Set points = _____.

(h) The annual fee to be assessed is calculated by
multiplying the total points determined under sub-
sections (f) and (g) of this section by the rate of \$75
per point. Permits having both process wastewater
discharges assessed under subsection (f) of this
section and stormwater discharges assessed under
subsection (g) of this section shall be assessed the
total of the fees determined under the respective

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subsections, not to exceed the maximum fee under subsection (a) of this section.

(i) The fee assessed an inactive permit shall be 50% of that calculated under subsection (f) and subsection (g) of this section. In no event shall the fee for an inactive permit be less than \$150 per year.

(j) Upon delegation of the National Pollutant Discharge Elimination System, a fee shall be determined by multiplying the base fee provided by subsection (c) of this section by a factor not to exceed 2.3. The minimum fee shall not be less than \$150 more than the pre-existing fee. This subsection shall not apply to domestic wastewater treatment facilities or confined/concentrated animal feeding operations until August 31, 1999.

Source: The provisions of this §305.503 adopted to be effective December 30, 1991, 16 TexReg 7206; amended to be effective February 14, 1994, 19 TexReg 800; amended to be effective June 9, 1996, 21 TexReg 4799.

§ 305.504. Fee Payment

Annual waste treatment fees are payable within 30 days of the billing date each year for all permittees. Fees shall be paid by check, certified check, or money order payable to the Texas Natural Resource Conservation Commission. New permits will require full payment of the appropriate fee within 30 days of the billing date, and thereafter will be assessed an annual waste treatment fee under the schedule set forth herein, beginning with the next regular billing date. All fee assessments are to be based on the permitted parameters (interim or final) specified in the permit, without regard to the actual quality of effluent that the permitted facility is discharging. Where the parameters authorized for a permitted facility change to a higher interim level or to the final level authorized by the permit, the revised fee, if any, will be assessed at the next regular payment date following the change in authorized limits. If a permit is amended to authorize lesser or greater parameters, the revised fee will be assessed at the next regular payment date following the final order of the Texas Natural Resource Conservation Commission effecting the amendment. Fees are payable regardless of whether the permitted facility actually is constructed or in operation.

Source: The provisions of this §305.504 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective December 30, 1991, 16 TexReg 7206; amended to be effective February 14, 1994, 19 TexReg 800.

§ 305.505. Fund

All fees collected under this waste treatment fee program are to be deposited in the water quality fund. The fund shall be managed in accordance with

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§305.501 of this title (relating to Purpose).

Source: The provisions of this §305.505 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective February 14, 1994, 19 TexReg 800.

§ 305.506. Cancellation, Revocation, and Transfer

Cancellation or revocation of a permit, whether by voluntary action on the part of the permittee or as a result of involuntary proceedings initiated by the commission, will not constitute grounds for a refund, in whole or in part, of any fee already paid by the permittee. Transfer of a permit will not entitle the transferor permittee to a refund, in whole or in part, of any fee already paid by that permittee. Any permittee to whom a permit is transferred shall be liable for payment of the annual fee assessed for the permitted facility on the same basis as the transferor of the permit.

Source: The provisions of this §305.506 adopted to be effective April 27, 1988, 13 TexReg 1775; amended to be effective February 14, 1994, 19 TexReg 800.

§ 305.507. Failure To Make Payment

(a) Failure to make payment in accordance with this subchapter constitutes a violation subject to enforcement pursuant to the provisions of the Water Code, §26.123.

(b) Owners or operators of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(c) Interest or penalties collected by the commission under this section shall be deposited to the water quality fund.

Source: The provisions of this §305.507 adopted to be effective February 14, 1994, 19 TexReg 800; amended to be effective February 14, 1997, 22 TexReg 1325.

SUBCHAPTER N. ADOPTION OF MEMORANDUM OF UNDERSTANDING BY REFERENCE

§ 305.521. Adoption of Memorandum of Understanding by Reference

The February 1992 Memorandum of Understanding between the Texas Department of Transportation and the Texas Water Commission (a predecessor to the Texas Natural Resource Conservation Commission), which concerns primarily the assessment of water quality impacts resulting from certain transportation projects, is adopted by reference. A copy of the document is available upon request from the

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Texas Natural Resource
Office of the Chief
Texas 78711-3087, (

Source: The provisions July 3, 1989, 14 TexReg 324, 1992, 17 TexReg 8735; 1995, 20 TexReg 10374; amended 23 TexReg 353; amended TexReg 11825.

Authority: The provision Texas Water Code, §5.104

SUBCHAPTER CONDITIONS WASTEWATER DISCHARGE SEWAGE

§ 305.531. Establishment

The following regulations Federal Regulation Conditions, and Procedures Applicable Elimination System effect as of the date as amended, are adopted:

(1) §122.41(a) permits. Section a permittee to conditions for toxic pollutants and disposal estimates (CWA), §307(a) a

(2) §122.42—A to specified categories 122.42 provides: manufacturing, cultural dischargers ment works (POTW)

(3) §122.43(a) conditions. Section assuring compliance of the CWA

(4) §122.44— standards, and other state NPDES pretreatment technology-based standards, other effluent reuse clause state requirements: levels, 24-hour monitoring requirements for POTWs, best management practices, private

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Texas Natural Resource Conservation Commission,
Office of the Chief Clerk, P.O. Box 13087, Austin,
Texas 78711-3087, (512) 239-3300.

Source: The provisions of this §305.521 adopted to be effective July 3, 1989, 14 TexReg 3008; amended to be effective December 24, 1992, 17 TexReg 8735; amended to be effective December 25, 1995, 20 TexReg 10374; amended to be effective January 16, 1998, 23 TexReg 353; amended to be effective November 29, 1998, 23 TexReg 11825.

Authority: The provisions of this Subchapter N issued under the Texas Water Code, §5.104.

SUBCHAPTER O. ADDITIONAL CONDITIONS AND PROCEDURES FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS

§ 305.531. Establishing and Calculating Addi- tional Conditions and Limita- tions for TPDES Permits

The following regulations contained in 40 Code of Federal Regulations, Part 122, Subpart C, Permit Conditions, and Part 124, Subpart D, Specific Procedures Applicable to Texas Pollutant Discharge Elimination System (TPDES) Permits, which are in effect as of the date TPDES program authorization, as amended, are adopted by reference.

(1) §122.41(a)(1)—Conditions applicable to all permits. Section 122.41(a)(1) relates to the duty of a permittee to comply with standards or prohibitions for toxic pollutants and sewage sludge use and disposal established under Clean Water Act (CWA), §307(a) and §405(d).

(2) §122.42—Additional conditions applicable to specified categories of NPDES permits. Section 122.42 provides additional conditions for existing manufacturing, commercial, mining, and silvicultural dischargers, and for publicly owned treatment works (POTWs).

(3) §122.43(a) and (b)—Establishing permit conditions. Section 122.43 relates to conditions assuring compliance with all applicable requirements of the CWA and regulations.

(4) §122.44—Establishing limitations, standards, and other permit conditions applicable to state NPDES programs. Section 122.44 relates to technology-based effluent limitations and standards, other effluent limitations and standards, reopeners clauses, water quality standards and state requirements, toxic pollutants, notification levels, 24-hour reporting, durations for permits, monitoring requirements, pretreatment programs for POTWs, best management practices, reissued permits, privately owned treatment works, grants,

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sewage sludge, Coast Guard, and navigation.

(5) §122.45—Calculating NPDES permit conditions. Section 122.45 relates to outfalls and discharge points, production-based limitations, metals, continuous discharges, noncontinuous discharges, mass limitations, pollutants in intake water, internal waste streams, and disposal of pollutants in intake water, internal waste streams, and disposal of pollutants into wells, into POTWs, or by land application.

(6) §122.50—Disposal of pollutants into wells, into POTWs, or by land application.

(7) §124.59—Conditions requested by the United States Army Corps of Engineers and other government agencies.

Source: The provisions of this §305.531 adopted to be effective October 8, 1990, 15 TexReg 5492.

§ 305.532. Adoption of Appendices by Refer- ence

The following appendices contained in 40 Code of Federal Regulations, Part 122, which are in effect as of the date of Texas pollutant discharge elimination system (TPDES) program authorization, as amended, are adopted by reference and apply only to TPDES permits:

(1) Appendix A—NPDES Primary Industry Categories;

(2) Appendix B—Criteria for Determining a Concentrated Animal Feeding Operation;

(3) Appendix C—Criteria for Determining a Concentrated Aquatic Animal Production Facility;

(4) Appendix D—NPDES Permit Application Testing Requirements.

Source: The provisions of this §305.532 adopted to be effective October 8, 1990, 15 TexReg 5492.

§ 305.533. Adoption of Environmental Protec- tion Agency Issued Permits and Pretreatment Programs

On the date of TNRCC assumption of the administration of the Texas Pollutant Discharge Elimination System (TPDES) permit program, after the Environmental Protection Agency (EPA) approves the TPDES permit program, and the issuance of national pollutant discharge elimination system (NPDES) permits is delegated from the EPA to the state, the state adopts all EPA permits and pretreatment programs, except that EPA shall retain jurisdiction over certain EPA-issued or proposed permits until their expiration which it has issued as may be specified in a state/federal Memorandum of Agreement. This provision does not affect the right

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of the EPA to issue NPDES permits for facilities which expired in the 12 months preceding the date of program assumption or to modify NPDES permits under Clean Water Act, §304(l). If the requirements of a state permit and an EPA permit issued to the same permittee or for the same facility are not of equal stringency, any requirements of the state-issued permit that are more stringent shall apply above and beyond those requirements contained in the corresponding EPA permit.

Source: The provisions of this §305.533 adopted to be effective October 8, 1990, 15 TexReg 5492; amended to be effective June 9, 1996, 21 TexReg 4800; amended to be effective December 1, 1997, 22 TexReg 11391.

§ 305.534. New Sources and New Dischargers

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Existing source—Any source which is not a new source or a new discharger.

(2) Facilities or equipment—Buildings, structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. These terms exclude facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(3) New source, new discharger, and site—See §305.2 of this title (relating to Definitions).

(4) Source—Any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(b) Criteria for new source determination.

(1) Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in §305.2 of this title (relating to Definitions) and:

(A) it is constructed at a site at which no other source is located; or

(B) it totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(C) its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the director shall consider such factors as the extent to which the new

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facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.

(2) A source meeting the requirements of paragraph (1) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

(3) Construction on a site at which an existing source is located results in an amendment subject to §305.62 of this title (relating to Amendments) rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (1)(B) or (C) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

(4) Construction of a new source as defined under §305.2 of this title (relating to Definitions) has commenced if the owner or operator has:

(A) begun, or caused to begin as part of a continuous on-site construction program:

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(B) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under this paragraph.

(c) Effect of compliance with new source performance standards. The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.

(1) Except as provided in paragraph (2) of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or

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which an existing amendment subject to Amendments (new discharger) if a new building, meeting the criteria of this subsection or adds to existing nt.

source as defined in Definitions) operator has: begin as part of a on program:

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ation work including removal of existing facilities which is ent, assembly, or facilities or equip-

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new source perfor- of this paragraph which modify their istruct new pollu- performance stan- v sources or new meet the require-

paragraph (2) of this ; the construction ober 18, 1972, or

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new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under the Clean Water Act (CWA), §301(b)(2), for the soonest ending of the following periods:

(A) 10 years from the date that construction is completed;

(B) 10 years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(C) the period of depreciation or amortization of the facility for the purposes of the Internal Revenue Code of 1954, §167 or §169 (or both).

(2) The protection from more stringent standards of performance afforded by paragraph (1) of this subsection does not apply to:

(A) additional or more stringent permit conditions which are not technology-based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under CWA, §307(a); or

(B) additional permit conditions in accordance with 40 Code of Federal Regulation (CFR) §125.3, adopted by §308.1 of this title (relating to Criteria and Standard for Imposing Technology-Based Treatment Requirements) controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When a Texas pollutant discharge elimination system (TPDES) permit issued to a source with a protection period under paragraph (1) of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of CWA, §301, and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

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(4) The owner or operator of a new source, a new discharger which commenced after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 40 CFR §122.47(a)(2).

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

Source: The provisions of this §305.534 adopted to be effective October 8, 1990, 15 TexReg 5492.

§ 305.535. Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities

(a) Authorized bypass. The permittee may allow any bypass to occur from a TPDES permitted facility which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (b) and (c) of this section.

(b) Notice.

(1) Anticipated bypass. In accordance with the procedures described in Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions), if the permittee knows in advance of the need for a bypass, it shall submit prior notice under §35.24 of this title (relating to Application for Emergency or Temporary Order) if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in §305.125(9) of this title (relating to Standards Permit Conditions (24-hour notice)).

(c) Prohibition of bypass.

(1) Bypass of untreated or partially treated wastewater is prohibited from a TPDES permitted facility, and the commission may take enforcement action against the permittee for bypass, unless all of the following conditions are met:

(A) Bypass was unavoidable to prevent loss of

30 TAC § 305.535

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life, personal injury, or severe property damage;

(B) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance;

(C) the permittee submitted notices as required under subsection (b) of this section.

(2) The commission may approve an anticipated bypass in accordance with the procedures described in Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions), after considering its adverse effects, if the commission determines that it will meet the three conditions listed in paragraph (1) of this subsection.

d) Establishing Limitations, Standards, and Other Conditions in TPDES Permits.

(1) Permits for POTWs shall contain technology-based treatment requirements based upon secondary treatment and "best practical waste treatment technology."

(2) This paragraph describes the minimum level of effluent quality attainable by POTWs in terms of the parameters of five-day biochemical oxygen demand (BOD₅), total suspended solids (TSS), and pH. All requirements shall be achieved except as provided for in this subsection.

(A) For BOD₅, the 30-day average shall not exceed 30 mg/l and the 7-day average shall not exceed 45 mg/l. The 30-day average percent removal shall not be less than 85%. At the option of the commission, in lieu of the BOD₅ parameter, the parameter five-day carbonaceous biochemical oxygen demand (CBOD₅) may be substituted. For CBOD₅, the 30-day average shall not exceed 25 mg/l and the 7-day average shall not exceed 40 mg/l. The 30-day average percent removal shall not be less than 85%.

(B) For TSS, the 30-day average shall not exceed 30 mg/l and the 7-day average shall not exceed 45 mg/l. The 30-day average percent removal shall not be less than 85%.

(C) For pH, the effluent values for pH shall be maintained within the limits of 6.0 and 9.0

unless the POTW demonstrates that inorganic chemicals are not added to the waste stream as part of the treatment process and contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

(3) Treatment works shall be eligible for consideration of effluent limitations described for treatment equivalent to secondary treatment, as described in 40 CFR §133.105, if the BOD₅ and TSS effluent concentrations consistently achievable through proper maintenance and operation of the treatment works exceed the minimum level of the effluent quality set forth in paragraph (2)(A) and (2)(B) of this subsection, a trickling filter or waste stabilization pond is used as the principal process, and the treatment works provide significant biological treatment of municipal wastewater.

(4) The minimum TSS effluent quality concentration achievable with waste stabilization ponds may be adjusted in accordance with 40 CFR §133.103(c).

(5) The commission is authorized to substitute either a lower percent removal requirement or a mass loading limit for a percent removal requirement set forth in this subsection provided the permittee satisfactorily demonstrates that:

(A) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent effluent removal requirements cannot be met due to a less concentrated influent wastewater;

(B) To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards (where the term "significantly more stringent limitations" means BOD₅ and TSS limitations necessary to meet the percent removal requirements of at least 5 mg/l more stringent than the otherwise applicable concentration-based limitations of this subsection, if such limits would, by themselves, force significant construction or other significant capital expenditure); and

(C) The less concentrated influent wastewater is not the result of excessive inflow or infiltration (I/I). The determination of whether the less concentrated wastewater is not the result of excessive I/I will be based upon the following definitions and criteria:

(i) Excessive infiltration/inflow is the quantity of infiltration/inflow which can be eco-

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nomically-eliminated, determined in that compare infiltration/inflow for transport infiltration/inflow

(ii) Nonexcess of flow which capita per day (tration) or that cannot be estimated from a cost-effective

(iii) Nonexcess total flow rate does not result in related treatment works total flow of more than 100 per day (domestic plus inflow). may include and overflow

Source: The provision October 8, 1990, 15 TexReg 10, 1997, 22 TexReg 10, 1998, 23 TexReg 124

§ 305.536. Rec

(a) Sludge standards with standards for established under the Code of Federal Regulations the time provided such standards, even modified to incorporate

(b) Additional conditions to all other rules described in §305.48 (Contents of Application Permits), all treatment works shall submit to time frames established in section the information 15(a)(2)(viii)-(xii),

(c) Time frames

(1) Any public utility with a current charge elimination shall submit the application this subsection

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ates that inorganic the waste stream as s and contributions not cause the pH of 6.0 or greater than

eligible for consid- described for treat- treatment, as de- the BOD₅ and TSS istently achievable nd operation of the inimum level of the ragraph (2)(A) and ding filter or waste e principal process, ide significant bio- wastewater.

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removal require- s would have to ingent limitations required by the s (where the term mitations" means ecessary to meet ents of at least 5 otherwise appli- mitations of this d, by themselves, or other signifi-

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nomically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

(ii) Nonexcessive infiltration is the quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

(iii) Nonexcessive inflow is the maximum total flow rate during storm events which does not result in chronic operational problems related to hydraulic overloading of the treatment works or which does not result in a total flow of more than 275 gallons per capita per day (domestic base flow plus infiltration plus inflow). Chronic operational problems may include surcharging, backups, bypasses, and overflows.

Source: The provisions of this §305.535 adopted to be effective October 8, 1990, 15 TexReg 5492; amended to be effective December 1, 1997, 22 TexReg 11391; amended to be effective December 10, 1998, 23 TexReg 12440.

§ 305.536. Requirements for Applications and Permits with Sludge Related Conditions

(a) Sludge standards. The permittee shall comply with standards for sewage sludge use or disposal established under the Clean Water Act, §405(d) (40 Code of Federal Regulations (CFR), Part 503) within the time provided in the regulations that establish such standards, even if the permit has not yet been modified to incorporate the standards.

(b) Additional contents of applications. In addition to all other requirements for information described in §305.48 of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits), all treatment works treating domestic sewage shall submit to the executive director within the time frames established in subsection (c) of this section the information described in 40 CFR §501.15(a)(2)(viii)-(xii), as amended.

(c) Time frames for applications.

(1) Any publicly owned treatment works (POTW) with a currently effective Texas pollutant discharge elimination system (TPDES) permit shall submit the application information required by this subsection when its next application for TP-

30 TAC § 305.538

DES permit renewal is due or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to POTWs' sludge use or disposal practices, whichever occurs first.

(2) Any other existing treatment works treating domestic sewage not covered under subsection (c)(1) of this section shall submit an application to the executive director within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practices or upon request of the executive director prior to the promulgation of an applicable standard for sewage sludge use or disposal if the executive director determines that a permit is necessary to protect public health and the environment from any adverse effect that may occur from toxic pollutants in sewage sludge.

(3) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the executive director at least 180 days prior to the date proposed for commencing operations.

(d) Fact sheets. A fact sheet shall be prepared for every draft permit described in 40 CFR §501.15(d)(4), as amended. The executive director shall send this fact sheet to the applicant and, on request, to any other person. The fact sheet shall include the information required by 40 CFR §501.15(d)(4) as amended.

Source: The provisions of this §305.536 adopted to be effective October 8, 1990, 15 TexReg 5492.

§ 305.537. Reporting Requirements for Planned Physical Changes to a Permitted Facility

Except to the extent that it is less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations §122.41(l)(1), which is in effect as of the date of Texas pollutant discharge elimination system (TPDES) program authorization, as amended, is adopted by reference.

Source: The provisions of this §305.537 adopted to be effective October 8, 1990, 15 TexReg 5492.

§ 305.538. Prohibitions for TPDES Permits

No permit may be issued under the conditions prohibited in 40 Code of Federal Regulations §122.4, as amended.

Source: The provisions of this §306.538 adopted to be effective October 8, 1990, 15 TexReg 5492.

30 TAC § 305.541

SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TPDES PERMITS

§ 305.541. Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System Permits

Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, 40 Code of Federal Regulations, Subchapter N, parts 400-471, except 40 Code of Federal Regulations, Part 403, which are in effect as of the date of Texas Pollutant Discharge Elimination System (TPDES) program authorization, as amended, are adopted by reference.

Source: The provisions of this §305.541 adopted to be effective October 8, 1990, 15 TexReg 5492.

SUBCHAPTER Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

§ 305.571. Applicability

Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 Code of Federal Regulations (CFR) §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners)) are subject to §305.572 of this title (relating to Permit and Trial Burn Requirements). Owners and operators of existing boilers and industrial furnaces operating under the interim status standards of 40 CFR §266.103 and §335.224 of this title are subject to §305.573 of this title (relating to Interim Status and Trial Burn Requirements).

Source: The provisions of this §305.571 adopted to be effective July 29, 1992, 17 TexReg 5016.

Authority: The provisions of this Subchapter Q issued under the Texas Water Code, §§5.103, 5.105, and 26.011; and the Solid Waste Disposal Act, §3 and §4.

§ 305.572. Permit and Trial Burn Requirements

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through December 11, 1995 (see 60 FedReg 63417):

(1) §270.66(b)—Permit Operating Periods for New Boilers and Industrial Furnaces, except that any permit amendment or modification shall proceed according to the applicable requirements of Subchapter D of this chapter (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

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(2) §270.66(c)—Requirements for Trial Burn Plans;

(3) §270.66(d)—Trial Burn Procedures, except §270.66(d)(3), and except that all required submissions must be certified on behalf of the applicant by the signature of a person authorized pursuant to §305.44 of this title (relating to Signatories to Applications);

(4) §270.66(e)—Special Procedures for DRE Trial Burns; and

(5) §270.66(f)—Determinations Based on Trial Burn.

(b) With regard to trial burn notice procedures, the chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 Code of Federal Regulations §270.66(d)(3)(i)-(ii) as amended through December 11, 1995, at 60 FedReg 63417. The applicant may not commence the trial burn until after the chief clerk has issued such notice. This paragraph applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

Source: The provisions of this §305.572 adopted to be effective July 29, 1992, 17 TexReg 5016; amended to be effective November 20, 1996, 21 TexReg 10982; amended to be effective August 8, 1999, 24 TexReg 5879

Authority: The provisions of this Subchapter Q issued under the Texas Water Code, §§5.103, 5.105, and 26.011; and the Solid Waste Disposal Act, §3 and §4.

§ 305.573. Interim Status and Trial Burn Requirements

(a) For the purpose of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR) §§266.104 through 266.107 and of determining adequate operating conditions under 40 CFR §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners), applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of 40 CFR §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners) must either prepare and submit a trial burn plan for approval by the executive director and perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Require-

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ments) or submit to 40 CFR §270.22(a)(notice of the executive prove the trial burn and distribution requirement (relating to De ance and Adequate tents of the notice telephone number c the name and telep at the permitting ag burn plan and any reviewed and copie that are required pr the anticipated tim plan and the time p would be conducte burn plan and recei the part B permit trial burn and subm §270.66(f) with th completion of this f for submission of t cant must contact t a later date for sub or the trial burn re

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ments) or submit other information as specified in 40 CFR §270.22(a)(6). The chief clerk shall provide notice of the executive director's intention to approve the trial burn, in accordance with the timing and distribution requirements of §305.572(b) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions). The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for approval of the plan and the time period during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in 40 CFR §270.66(f) with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the executive director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a

30 TAC § 305.573

trial burn for approval by the executive director with Part B of the permit application, the approved trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the executive director.

(b) Owners and operators who have obtained approval of trial burn plans pursuant to 40 CFR §270.66 prior to the effective date of this section may request executive director approval of the trial burn plan and the executive director may approve the trial burn plan, whether or not the trial burn has been conducted. If the executive director does not approve the trial burn plan, then the owner or operator must prepare and submit a trial burn plan and receive approval from the executive director, and then perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR §270.22(a)(6).

Source: The provisions of this §305.573 adopted to be effective July 29, 1992, 17 TexReg 5016; amended to be effective August 8, 1999, 24 TexReg 5869

Authority: The provisions of this Subchapter Q issued under the Texas Water Code, §§5.103, 5.105, and 26.011; and the Solid Waste Disposal Act, §3 and §4.

30 TAC § 323.22

(4) to remove the sign immediately when notified by the executive director that the facility is no longer approved.

(b) In addition, a city whose facility has been approved must agree to consult with the district engineer of the department of highways and public transportation or his representative as to the location and height of the sign prior to erecting it.

Source: The provisions of this §323.22 adopted to be effective February 23, 1978, 3 TexReg 620.

Authority: The provisions of this Subchapter B are promulgated under the Texas Water Code, §5.131 and §5.132.

§ 323.23. Rating Procedures

(a) Once the rating system has been developed, the executive director will institute a program for

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the evaluation of all waste disposal facilities. A person may request in writing of the executive director that he evaluate the facility.

(b) A waste disposal facility which has been rated, may be reevaluated by the executive director at least once a year to ensure that the facility continues to merit approval.

(c) Whenever a person's waste disposal facility is given a rating attained and the factors which brought about the rating.

Source: The provisions of this §323.23 adopted to be effective February 23, 1978, 3 TexReg 620.

Authority: The provisions of this Subchapter B are promulgated under the Texas Water Code, §5.131 and §5.132.

CHAPTER 324. USED OIL

SUBCHAPTER A. USED OIL RECYCLING

Section

- 324.1. Federal Rule Adoption by Reference.
- 324.2. Definitions.
- 324.3. Applicability.
- 324.4. Prohibitions.
- 324.5. Notice by Retail Dealer.
- 324.6. Generators.
- 324.7. Collection Centers.
- 324.11. Transporters and Transfer Facilities.
- 324.12. Processors and Rerefiners.
- 324.13. Burners of Off-specification Used Oil for Energy Recovery.
- 324.14. Marketers of Used Oil Fuel.
- 324.15. Spills.
- 324.16. Polychlorinated Biphenyls (PCBs).
- 324.21. Suspension or Revocation of Registration.
- 324.22. Soil Remediation Requirements for Used Oil Handlers.

SUBCHAPTER A. USED OIL RECYCLING

§ 324.1. Federal Rule Adoption by Reference

The requirements in 40 Code of Federal Regulations, Part 279, Standards for the Management of Used Oil, as amended through May 26, 1998 at 69 FedReg 28556, are adopted by reference. However, requirements in this chapter also apply.

Source: The provisions of this §324.1 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.2. Definitions

Most words are as defined in 40 CFR §279.1. However, the following words have these meanings:

(1) Aboveground tank—A tank used to store or process used oil that is not an underground storage tank as defined in 30 TAC Chapter 334 of this

title (relating to Underground and Aboveground Storage Tanks).

(2) Administrator or Regional Administrator—These terms in 40 CFR Part 279 requirements should be replaced with the "State Administrator, the Executive Director of the Texas Natural Resource Conservation Commission or his representative."

(3) Commission—The Texas Natural Resource Conservation Commission or its successor.

(4) Environmental Protection Agency (EPA)—This term in 40 CFR Part 279 requirements should be replaced with "commission."

(5) Recycling—

(A) Preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) Using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) Burning used oil for energy recovery.

(6) Re-refining—Applying processes (other than crude oil refining) to material composed primarily of used oil to produce high-quality base stocks for petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating, or polishing.

(7) Secondary containment—Dikes, berms, retaining walls, and/or equivalent made of a material(s) that is sufficiently impervious to used oil. These structures all potential spills of used oil from the tanks or containers, plus run-on water, until removal of the spill.

(8) Sufficiently impervious to used oil—

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Capable of containing oil from container spill.

(9) Synthetic oil. This includes polymer-based polymeric synthetic heat transfer fluid used for the same and have relative retention after use.

(10) Used oil owner or operator, rerefining, oiling facility.

(11) Earthen airtight is the earthen airtight any transportation oil occurs.

Source: The provision March 6, 1996, 21 TexReg 1999, 24 TexReg 5882

§ 324.3. Applicability

Applicability and will be as in 40 CFR clarified here.

(1) A used oil arduous waste material of this title (relating to Municipal Hazardous Waste Number "that is listed by contaminants.

(2) Used oil containers not meeting requirement in compliance with used oil storage surface impoundment lagoons, pits, or pits, unless the container containing de unless the unit is 264/265, Subpart

(3) Requirements for hazardous waste with oil (relating to Mixed Waste). Mixing containers by other than generators within their appropriate requires a hazard §335.2 of this title

USED OIL

able of containing all potential spills of used oil from containers and tanks until removal of the oil from the facility.

(9) Synthetic oils—Oils not derived from crude oil. This includes those from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids used as hydraulic or transfer fluids. Synthetic oils are generally used for the same purpose as crude oil derived oils and have relatively the same level of contamination after use.

(10) Used oil handler—A transporter or an owner or operator of a used oil transfer, processing, re-refining, or off-specification used oil burning facility.

(11) Earthen area—The active area of the facility is the earthen area at the facility over which transportation, storage, or processing of used oil occurs.

Source: The provisions of this §324.2 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§324.3. Applicability

Applicability and exemptions from applicability shall be as in 40 CFR Part 279, Subpart B, and as specified here.

(1) A used oil contaminated with a listed hazardous waste must be handled under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). EPA Hazardous Waste Number "F002" must be used on used oil that is listed hazardous due to halogenated contaminants.

(2) Used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265. The requirement in 40 CFR Part 279 that refers to compliance with Parts 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in compliance with 40 CFR Part 264/265, Subpart K.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10 (b) (relating to Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per 30 TAC §335.2 of this title (relating to Permit Required). A

waste that is characteristically hazardous for "ignitability only" can be mixed with used oil. However, the resultant mixture cannot exhibit the hazardous ignitability characteristic to manage it under this chapter and 40 CFR Part 279 rather than Chapter 335 of this title. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics. The resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils or products is also a processor subject to 40 CFR Part 279, Subpart F (relating to Standards for Used Oil Processors and Re-refiners) and §324.12 of this chapter (relating to Processors and Rerefiners).

(4) A used oil shall not be regulated until it is a spent material as defined in 40 CFR §261.1(c)(1) and 30 TAC §335.17 of this title (relating to Special Definitions for Recyclable Materials and Non-hazardous Recyclable Materials).

Source: The provisions of this §324.3 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.4. Prohibitions

Prohibitions will be as in 40 CFR Subpart B, §279.12 and as specified here.

(1) A person must not collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or the environment.

(2) A person commits an offense if the person:

- (A) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

- (B) knowingly puts used oil in waste that is to be disposed of in landfills or directly disposes of used oil on land;

- (C) knowingly transports, treats, stores, disposes of, recycles, markets, burns, processes, re-refines used oil within the state:

- (i) without first complying with the registration requirements of this rule; and/or

- (ii) in violation of rules for the management of used oil;

- (D) intentionally applies used oil to roads or

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land for dust suppression, weed abatement, or other similar uses;

(E) violates an order of the commission to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or

(F) intentionally makes any false representation in any document used for program compliance.

(3) An exception to paragraph (2) of this subsection is if a person unknowingly disposes into the environment any used oil that has not been separated by the generator from other solid wastes.

(4) An exception to paragraph (2)(B) of this subsection is if the mixing or commingling of used oil with waste to be disposed of in landfills is the unavoidable result of the mechanical shredding of motor vehicles, appliances or other metals.

Source: The provisions of this §324.4 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.5. Notice by Retail Dealer

Written requests for signs should be sent to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.5 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.6. Generators

Rules for used oil generators shall be as in 40 CFR Part 279, particularly Subpart C. A person or entity that services equipment involving removal of used oil or changes used oil at a customer's home or business and transports the used oil from the site in quantities less than or equal to 55 gallons may choose to be the generator. If the service company removing the used oil from equipment does not assume generator responsibility, the site owner or operator will remain the generator.

Source: The provisions of this §324.6 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.7. Collection Centers

Rules for "do-it-yourselfer used oil collection centers" and "used oil collection centers" (as defined in 40 CFR §279.1) shall be as in 40 CFR Part 279, particularly Subpart D, and as specified here. All appropriate businesses and government agencies are encouraged to serve as "do-it-yourselfer used oil

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collection centers" or "used oil collection centers." Collection centers collecting used oil from households will be publicized by the commission.

(1) A "Do-it-yourselfer Used Oil Collection Center" must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) must register each odd numbered year, no later than January 25 following the close of the year, with the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087 utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) annually report the amount of household used oil collected by January 25 of each year on a commission form.

(2) Household used oil is not subject to the rebuttable presumption (a requirement to prove that used oil is not hazardous).

(3) A "Used Oil Collection Center" must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) register each odd numbered year no later than January 25 following the close of the year, with the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087 utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) report annually the amount of household and non-household used oil collected by Janu-

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when sampling and analyzing, keeping records, and complying with analytical requirements for documenting that used oil is not listed hazardous and/or the used oil fuel specification has been met. This plan must specify the frequency of sampling and analysis. It must also specify procedures and analysis to assure listed hazardous wastes are not mixed with the used oil received. It must also contain procedures for handling a shipment of contaminated used oil. A facility need not prepare an analysis plan if it:

(A) only processes its own used oil; and

(B) uses adequate process knowledge instead of analysis to prove that the used oil meets rule requirements.

(4) Biennial report. The biennial report required by 40 CFR §279.57(b) covering each odd numbered year must be provided to the commission by December 1 of the odd numbered year if all used oil operations have been completed for that year. If not, you must submit the report by January 25 of the following even numbered year. The information must be entered on a commission form. Mail the report to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.12 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.13. Burners of Off-specification Used Oil for Energy Recovery

Rules for burners of off-specification used oil for energy recovery are in 40 CFR Part 279, particularly Subpart G, and in this section.

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Burners must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Burners must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.13 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

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January 25 of each year on a commission form. Mixtures of household used oil and non-household used oil shall be considered non-household used oil.

(4) Household used oil is not subject to the rebuttable presumption (a requirement to prove used oil is not hazardous) unless mixed with non-household used oil.

Source: The provisions of this §324.7 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§324.11. Transporters and Transfer Facilities

Rules for used oil transporters and transfer facilities are in 40 CFR Part 279, particularly Subpart E, and in this section.

(1) Underground storage tanks (USTs). Underground storage tanks containing used oil are subject to Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 279.

(2) Registration. Transporters must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Transporters must register, through the commission, using EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.11 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.12. Processors and Rerefiners

Rules for used oil processors and rerefiners are in 40 CFR Part 279, particularly Subpart F, and in this section.

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Processors and rerefiners must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Processors and rerefiners must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Analysis plan. Each facility must prepare an analysis plan. The facility will follow the plan

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§ 324.14. Marketers of Used Oil Fuel

Rules for marketers of used oil which will be burned for energy recovery are in 40 CFR Part 279, particularly Subpart H, and this section. Marketers must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Marketers must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

Source: The provisions of this §324.14 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.15. Spills

See Chapter 327 of this title (relating to Spill Prevention and Control), particularly §327.4(b)(2) of this title (relating to Reportable Quantities). §324.16. Polychlorinated Biphenyls (PCBs). Per 40 CFR 279 (Table 1), the rules for burning used oil containing PCBs shall be as in 40 CFR 761.20(e).

Source: The provisions of this §324.15 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.16. Polychlorinated Biphenyls (PCBs)

Per 40 CFR 279 (Table 1), the rules for burning used oil containing PCBs shall be as in 40 CFR 761.20(e).

Source: The provisions of this §324.16 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.21. Suspension or Revocation of Registration

(a) The commission may suspend or revoke a registration for:

- (1) failure to maintain complete and accurate records;
- (2) alteration of any record, except justified and documented corrections;
- (3) delivery of used oil to an unregistered entity;
- (4) failure to comply with this rule or an order issued by the commission;
- (5) failure to submit required reports;
- (6) failure to maintain financial assurance; or
- (7) failure to reasonably perform the used oil activities for which the registration was issued.

(b) A registration shall be suspended for a period of one year. However, depending upon the serious-

ness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically on a second suspension. If the registration is suspended or revoked, a facility must not possess or accept used oil regulated under this rule.

(c) The holder of a revoked used oil registration may reapply for registration after a period of at least one year. If a registration is revoked by the commission a second time, the revocation shall be permanent.

(d) The procedure for an appeal of a suspension or revocation of registration is:

(1) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by certified mail, return receipt requested. The request must be postmarked within 20 days after a notice of proposed suspension or revocation of registration has been sent to the last known address of the applicant.

(2) An opportunity for a formal hearing may be requested in writing by the applicant by certified mail, return receipt requested. The request must be postmarked within 20 days after a notice of denial of registration has been sent to the last known address of the applicant. If the registration is denied, a person must not possess used oil regulated under this rule.

(3) The formal hearing under this paragraph shall be in accordance with the requirements of §305.68 of this title (relating to Action and Notice of Petition for Revocation or Suspension).

Source: The provisions of this §324.21 adopted to be effective March 6, 1996, 21 TexReg 2393; amended to be effective August 8, 1999, 24 TexReg 5882

§ 324.22. Soil Remediation Requirements for Used Oil Handlers

(a) This section applies to transporters of used oil who are seeking registration under this chapter. It also applies to owners and operators of used oil transfer, processing, rerefining, and off-specification used oil burning facilities referred to as "used oil handlers." It does not apply to a used oil handler which is owned or otherwise effectively controlled by the owners or operators where the used oil is generated.

(b) Transporters of used oil must meet the requirements as they pertain to insurance in Chapter 37, §37.2021 of this title (relating to Financial Responsibility Requirements for Transporters of Used Oil). Also, used oil handlers subject to the requirements as they pertain to soil remediation of either subsection (c) or (d) of this section must meet the requirements in §37.2011 of this title (relating to Financial

USED OIL

Responsibility Requirements

(c) Used oil handlers this subsection must provide soil remediation in the handler must, within 30 active area of the facility financial assurance increased financial assurance handler must, at a minimum assurance annually to to inflation and to adjustments, including amount. The active area at the facility over storage, or processing demonstrating the size facility and related firm maintained in the facility ever, the original financial must be submitted to 2011(c) of this title. The financial assurance is:

(1) for a facility of 1,000 square feet up to 10,000 square feet, \$4,100 for each 10,000 square feet

(2) for a facility of 10,000 square feet up to 100,000 square feet, \$41,000 for each 100,000 square feet

(3) for a facility of 100,000 square feet up to 1 million square feet, \$41,000 for each 100,000 square feet and \$4,100 for each additional 100,000 square feet

(4) for a facility of 1 million square feet or more, \$41,000 for each 1 million square feet and \$4,100 for each additional 1 million square feet

(d) Used oil handlers must meet alternate requirements

(1) used oil handlers must obtain certification from the executive director of the Texas Natural Resource Conservation Commission that the units exhibit a certification must

(A) annually provide to the executive director of the Texas Natural Resource Conservation Commission a certification must

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of suspension may be registration is revoked. If the registration is revoked, the facility must not be used under this rule. If a used oil registration is revoked after a period of at least 30 days, the revocation shall be permanent. An appeal of a suspension is:

A formal hearing on the revocation of registration may be requested by certified mail, return receipt requested. The request must be postmarked within 30 days of the date of proposed suspension. If the registration has been sent to the commission, the applicant must submit the request to the commission.

A formal hearing may be requested by the applicant by certified mail, return receipt requested. The request must be submitted within 30 days after a notice of suspension has been sent to the applicant. If the registration is not possessed by the applicant, the request must be submitted within 30 days after a notice of suspension has been sent to the applicant.

Under this paragraph, the requirements of Chapter 327 of this title (relating to Action and Notice of Suspension).

§ 324.21 adopted to be effective August 1, 1993.

Liability Requirements for Used Oil Handlers

to transporters of used oil under this chapter. Handlers and operators of used oil refining, and off-site facilities referred to as "used oil handlers" must apply to a used oil handler who is not otherwise effectively controlled by the state where the used oil is

Used oil must meet the requirements of Chapter 327 of this title (relating to Financial Responsibility Requirements for Used Oil Handlers).

USED OIL

Financial Responsibility Requirements for Used Oil Handlers).

(c) Used oil handlers meeting the requirements of this subsection must provide financial assurance for oil remediation in the amounts specified. A used oil handler must, within 30 days after an increase in the active area of the facility which results in a higher financial assurance requirement, provide for increased financial assurance. Additionally, a used oil handler must, at a minimum, update its financial assurance annually to cover any increased cost due to inflation and to account for any other appropriate adjustments, including a lower financial assurance amount. The active area of the facility is the earthen area at the facility over which any transportation, storage, or processing of used oil occurs. Records demonstrating the size of the active area of the facility and related financial assurance are to be maintained in the facility's operating record; however, the original financial assurance mechanism must be submitted to the commission per § 37.1011(c) of this title. The amount required for financial assurance is:

(1) for a facility with an active area of over 1,000 square feet up to 10,000 square feet, \$410 for each 1,000-square-foot increment;

(2) for a facility with an active area of over 10,000 square feet up to 100,000 square feet, \$4,100 for each 10,000-square-foot increment;

(3) for a facility with an active area of over 100,000 square feet up to 1 million square feet, \$41,000 for each 100,000 square-foot increment and \$4,100 for each 10,000 square-foot increment;

(4) for a facility with an active area of over 1 million square feet, \$410,000 for each 1-million-square foot increment, \$41,000 for each 100,000 square-foot increment, and \$4,100 for each 10,000 square-foot increment; or

(d) Used oil handlers may meet the following alternate requirements:

(1) used oil handlers must:

(A) annually provide a certification statement to the executive director that the used oil handler is in compliance with the applicable requirements of this chapter; and

(B) obtain certification from a Registered Professional Engineer or other qualified independent professional that the used oil facility units have been designed and constructed in accordance with appropriate design standards, and that the units exhibit mechanical integrity. Such a certification must be obtained for each unit

added to the facility, and for each unit that has undergone repair to restore mechanical integrity, within 90 days of the addition or completion of repair;

(2) Used oil handlers must ensure that spills in quantities of 25 gallons or greater are reported to the agency in accordance with the spill reporting requirements of Chapter 327 of this title (relating to Spill Prevention and Control);

(3) Used oil handler facilities must have secondary containment for all areas where used oil is stored, transferred, or otherwise handled. These areas include but are not limited to loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours. Also, the facility's used oil tanks, containers, and secondary containment must be constructed, operated, and maintained to meet the requirements of 40 Code of Federal Regulations §§ 264.174, 264.193(c)-(f), and 264.195(b), or to meet the following requirements:

(A) the secondary containment must be:

(i) stationary;

(ii) constructed of non-earthen material (e.g., concrete);

(iii) maintained free of cracks, gaps, or holes; and

(iv) overlain or underlain with a synthetic liner at least 40 mils thick;

(B) the secondary containment must:

(i) be large enough to contain a catastrophic spill of 100% of the capacity of the largest used oil storage, transfer, or other handling equipment or device; and

(ii) have at least 12 inches of freeboard or sufficient freeboard to hold the precipitation which would be collected, including any run-on or infiltration of precipitation, as a result of a 25-year, 24-hour rainfall event;

(C) the secondary containment system must prevent the release of used oil or other accumulated liquid from the secondary containment system to the soil, ground water, or surface water until removed;

(D) used oil or other accumulated liquid must be removed from the secondary containment system within 24 hours from discovery, or in as timely manner as possible;

(4) Used oil handlers must provide spill response capability to adequately respond to a catastrophic spill of 100% of the capacity of the largest

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used oil storage, transfer, or other handling equipment or device, plus 10% of the remaining storage capacity; and

(5) Used oil handlers must meet the requirements of subsection (c) of this section, but the amount of financial assurance provided is 10% of

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the amount that would otherwise be required under subsection (c).

Source: The provisions of this §324.22 adopted to be effective March 17, 1998, 23 TexReg 2822; amended to be effective August 8, 1999, 24 TexReg 5882

CHAPTER 325. CERTIFICATES OF COMPETENCY

Section

- 325.1. Definitions.
- 325.2. Certificates for Wastewater Treatment Plant Operators.
- 325.3. Certificates for Collection System Operators.
- 325.4. (Effective Beginning September 1, 1991)—Classification of Wastewater Treatment Facilities.
- 325.5. Applications and Fees.
- 325.6. Renewal of Operator Certificates.
- 325.7. Certificates for Wastewater Treatment Facility Operations Companies.
- 325.8. Terms of Certificates for Wastewater Treatment Facility Operations Companies.
- 325.9. Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies.
- 325.10. Public Hearing on Applications for Renewal of Certificates for Wastewater Treatment Facility Operations Companies.
- 325.11. Sanctions.
- 325.12. Notice of Hearings.
- 325.13. Enforcement Hearings.
- 325.14. Reciprocity.
- 325.15. Perpetual Certificates of Competency.
- 325.16. Nonrenewal of Certificate of Competency Due to Loan Default.

§ 325.1. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certificate of competency—The certificate issued by the Texas Water Commission to treatment plant and collection system operators and wastewater treatment facility operations companies to operate or assist in the operation of a wastewater treatment facility and/or collection system.

(2) Commission—The Texas Water Commission.

(3) Executive director—The executive director of the Texas Water Commission.

(4) Permit—A wastewater disposal permit issued by the Texas Water Commission pursuant to the Texas Water Code, Chapter 26.

(5) Wastewater—Waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(6) Wastewater collection system—The trunks, arterials, channels, conduits, manholes, pumps, pumping stations, piping, and other appurte-

nances necessary to collect wastewater from a community, water district, corporation, company, or other entity which produces domestic sewage or a majority of domestic sewage with other liquid wastes treatable in a wastewater treatment facility.

(7) Wastewater collection system operator—Any person, in active field supervision, who provides frequent on-site inspection and supervision of collection system operation and/or maintenance activities.

(8) Wastewater treatment facility—Any plant, disposal field, lagoon or other facility installed for the purpose of treating, neutralizing, or stabilizing wastewater, the operation of which requires a wastewater disposal permit from the Texas Water Commission.

(9) Wastewater treatment facility operations company—Any business, company, corporation, firm, partnership, or other nongovernmental entity that employs one or more wastewater treatment plant operators for the purpose of providing operations services, on a contractual basis, to one or more holders of permit.

(10) Wastewater treatment plant operator—Any person who operates a domestic wastewater treatment facility, including those who perform day-to-day maintenance work so long as the primary function of the operator involves process control, but excluding such persons as directors of public works, city engineers, city managers, or other persons whose duties do not include actual operation or direct supervision of wastewater disposal facilities.

Source: The provisions of this §325.1 adopted to be effective July 8, 1986, 11 TexReg 2984; amended to be effective December 29, 1987, 12 TexReg 4699; amended to be effective March 16, 1990, 15 TexReg 1174.

Authority: The provisions of this Chapter 325 issued under the Texas Water Code, §5.103 and §5.105.

§ 325.2. Certificates for Wastewater Treatment Plant Operators

(a) Any wastewater treatment plant operator as defined in §325.1 of this title (relating to Definitions) must hold a valid certificate of competency issued

CERTIFICATES OF

pursuant to this chapter. A person first entering employment may be employed without certification until another certified operator is employed one year after employment of the person to obtain certification. Any operator-in-training who is currently employed in the current certification employment is prohibited from performing operational functions unless authorized to do so by the Commission or revocation of this title (relating to Certificate), the operator may assist in operation of the plant, unless specific commission, or until reinstated.

(b) Each holder of a certificate for a wastewater treatment facility or more treatment

Certificate
Class A
Class B
Class C
Class D

(e) Credit for related experience with wastewater laboratory analyses may be provided at a rate of only if the experience is required for operation of the facilities. At least one requirement must be met for treatment plant Class D) shall be less than one year. Experience to be applicable to operator certification