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Vernon's
TEXAS CODES
ANNOTATED



HEALTH AND SAFETY CODE
Sections 241.001 to 364

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SANITATION AND ENVIRONMENTAL QUALITY

Title 5

Law Review Commentaries

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Air pollution control in Texas. G. Todd Norvell and Alexander W. Bell, 47 Texas L.Rev. 1086 (1969).

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Effective participation in adjudicatory and legislative functions of Texas environmental agencies. W. Thomas Buckle, 9 St. Mary's L.J. 789 (1978).

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What price innocence? A realistic view of the innocent landowner defense under CERCLA. Debra L. Baker and Theodore G. Baroody, 22 St. Mary's L.J. 115 (1990).

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

SUBCHAPTER A. GENERAL PROVISIONS

§ 361.001. Short Title

This chapter may be cited as the Solid Waste Disposal Act.

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

Historical and Statutory Notes

Acts 1991, 72nd Leg., 1st C.S., ch. 15, § 1.09, provides:

"Transfer of Environmental Protection Duties to the Texas Water Commission. (a) On March 1, 1992, the powers, duties, obligations, functions, and activities of the Texas Board of Health and the Texas Department of Health or the officers of those agencies assigned by the following provisions of law are transferred to the Texas Water Commission:

"(1) Subchapter C, Chapter 341, Health and Safety Code;

"(2) Chapter 361, Health and Safety Code;

"(3) Chapter 362, Health and Safety Code;

"(4) Chapter 363, Health and Safety Code;

"(5) Chapter 364, Health and Safety Code;

"(6) Chapter 365, Health and Safety Code;

"(7) Chapter 366, Health and Safety Code;

"(8) Chapter 367, Health and Safety Code;

"(9) Chapter 368, Health and Safety Code;

"(10) Chapter 401, Health and Safety Code, as it relates to the licensing and regulation of the disposal of radioactive substances, including by-product material, radioactive material, radioactive waste, source material, sources of radiation, and special nuclear material as those terms are defined by Section 401.003, Health and Safety Code; and

"(11) Chapter 402, Health and Safety Code.

"(b) The secretary of state is authorized to adopt rules as necessary to expedite the implementation of this section."

Prior Laws:

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

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

Vernon's Ann.Civ.St. art. 4477-7, § 1.

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Law Review Commentaries

Annual Survey of Texas Law: Environmental Law. Diana C. Dutton, 45 Sw.L.J. 389 (1991).

Library References

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WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 44, 61 to 94, 104 to 153.

§ 361.002. Policy; Findings

(a) It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated.

(b) The storage, processing, and disposal of hazardous waste at municipal solid waste facilities pose a risk to public health and the environment, and in order to protect the environment and to provide measures for adequate protection of public health, it is in the public interest to require hazardous waste to be stored, processed, and disposed of only at permitted hazardous industrial solid waste facilities.

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

Historical and Statutory Notes

Section 1 of art. 1 of the 1990 amendatory act provides:

"(a) This Act is enacted as part of the state's continuing statutory revision program under Chapter 323, Government Code. This Act is a revision of statutes, without substantive change, for purposes of Article III, Section 43, of the Texas Constitution and has the purposes of:

"(1) conforming the Health and Safety Code to certain laws that were passed by the 71st Legislature and that amended the laws codified by the Health and Safety Code or enacted new laws that should be codified in the Health and Safety Code;

"(2) codifying certain laws that were omitted from the Health and Safety Code;

"(3) making necessary corrective changes in the Health and Safety Code; and

"(4) making necessary conforming amendments to other laws.

"(b) The Code Construction Act (Chapter 311, Government Code) applies to this Act as if this Act were a code governed by that Act.

"(c) The repeal of a law, including a validating law, by this Act does not remove, void, or

otherwise affect in any manner a validation under the repealed law. The validation is preserved and continues to have the same effect that it would have if the law were not repealed. This subsection does not diminish the saving provisions prescribed by the Code Construction Act (Section 311.031, Government Code).

"(d) A transition or saving provision of a law codified by this Act applies to the codified law to the same extent as it applies to the original law. The repeal of a transition or saving provision by this Act does not affect the application of the provision to the codified law. In this subsection, "transition provision" includes any temporary provision providing for a special situation during the transition period between the time of the existing law and the establishment or implementation of a new law."

Prior Laws:

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

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

Acts 1989, 71st Leg., ch. 536, § 1.

Vernon's Ann.Civ.St. art. 4477-7, § 1.

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Notes of Decisions

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2. Construction and application

Statute and bill creating the Anderson County Underground Water Conservation District are not, on their face, in conflict. Op.Atty.Gen. 1987, No. JM-827.

3. Validity of regulations

Regulations of the Department of Health governing solid waste disposal facilities are not unconstitutionally vague, even though they do not contain definitions of the terms "land use" or "improper land use." *Browning-Ferris, Inc. v. Texas Dept. of Health* (App.1981) 625 S.W.2d 764, ref. n.r.e.

1. Validity of prior law

Statute provides sufficient guidelines to Department of Health and does no more than delegate to Department the authority to establish reasonable rules and regulations to carry out express purposes of this section, to safeguard health, welfare, and physical property of people, and to protect environment, which include licensing of solid waste disposal sites. *Med-Safe, Inc. v. State* (App. 1 Dist.1988) 752 S.W.2d 638.

§ 361.003. Definitions

Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Board" means the Texas Natural Resource Conservation Commission.

(3) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

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

(5) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

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

(7) "Commissioner" means the executive director of the Texas Natural Resource Conservation Commission.

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

(9) "Department" means the Texas Natural Resource Conservation Commission.

(10) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

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

(12) "Executive director" means the executive director of the commission.

(13) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(14) "Hazardous substance":

(A) means:

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

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

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

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

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

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

(B) does not include:

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

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

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

(15) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(16) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

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

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

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

(20) "Local government" means:

(A) a county;

(B) a municipality; or

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

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

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

(23) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

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

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

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

(27) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(28) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission or department determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(29) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the board of health under that law.

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

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

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

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

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

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

(E) the normal application of fertilizer.

(32) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(33) "Removal" includes:

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

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

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

(D) disposing of removed material;

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

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

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

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

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

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

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(35) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the commission.

(36) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

Subdivision (37) expires on delegation of Resource Conservation and Recovery Act authority to the Railroad Commission of Texas

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

(A) does not include:

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

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

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

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

Subdivision (38) is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas

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

(A) does not include:

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

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

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

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

(39) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(40) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the board of health or commission.

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

(42) [Blank].

(43) [Blank].

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

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 2, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, § 1.01, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.025, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.01, eff. Sept. 1, 1991.

¹ 42 U.S.C.A. § 9604.

Revisor's Note

(1) The source law refers to the Texas Department of Health's authority to adopt rules. Article 4414b, Revised Statutes, provides that the Texas Board of Health is the entity that adopts rules. Consequently, the revised law assigns that duty to the Texas Board of Health.

(2) The source law definition of "environmental response law" refers to "Pub.L. No. 96-510." This reference is changed in the revised law to "42 U.S.C. Section 9601 et seq." for consistency with other citations to federal law.

(3) The source law refers to "an incorporated city or town." The revised law substitutes "municipality" for "city or town" because that is the term used in the Local Government Code. In addition, since under the Local Government Code all municipalities are incorporated, the revised law omits as redundant the reference to "incorporated" and refers only to municipalities.

(4) The revised law omits as unnecessary the source law definition of "notice of intent to file an application."

(5) The revised law omits the definition of "person" because a definition containing the same substance is provided by the definitions section of the Code Construction Act (Section 311.005, Government Code).

(6) The source law refers to Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes). That statute is revised as Chapter 401, and the revised law reflects this change.

(7) The revised law omits the definition of "state agency" and "state agencies" contained in Section 4(a) of V.A.C.S. Article 4477-7. The source law gives the Texas Department of Health and the Texas Water Commission divided responsibilities in the regulation and management of solid waste. Many of the provisions of the source law apply to both the department and commission and many provisions apply equally to each separately. The omitted definition allowed a common reference to be used when referring to either or both of the agencies. That generic term is misleading to any reader of the law who is not familiar with the act as a whole and often does not work well in context. In this code the generic terms are eliminated and references to the department and commission are used as needed.

Historical and Statutory Notes

Section 1.25(a), (d), (e) of Acts 1991, 72nd Leg., ch. 296 provides:

"(a) This article applies to any permit application, including permit applications for facilities operating under interim status, covered by the terms of this article that is pending approval on the effective date of this article. Any application for renewal of or amendment to a permit for an existing facility that includes a request for authorization to increase capacity at the facility shall comply with the terms of this article; provided, however, that the provisions of Sections 1.16 and 1.17 of this article do not apply to an application for renewal of or amendment to a permit for an existing facility or to an existing facility burning waste-derived fuels under a Texas Water Commission or Texas Air Control Board permit on the effective date of this article."

"(d) The provisions of this article do not apply to applications that are on file on the effective date of this article and that are only for permits for the disposal of treatment residues and other nonincinerable wastes generated at the same facility or at facilities wholly owned by the applicant.

"(e) The provisions of this article apply to any application to amend a nonhazardous waste facility permit to accept hazardous waste that is pending approval on the effective date of this article and to all existing nonhazardous waste permits. If a nonhazardous waste facility has become a hazardous waste facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. The provisions of this article

and this subsection do not apply to a noncommercial facility that is required to obtain a hazardous waste permit under the federal toxicity characteristic rule."

Sections 1.29 and 3.01 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.29. If either S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and is approved by the Governor, the duties, powers, and responsibilities conferred by this article on the Texas Water Commission, the Texas Department of Health, or the Texas Air Control Board are transferred to the Texas Department of Natural Resources."

"Sec. 3.01. This Act may be referred to as the Waste Reduction Policy Act of 1991."

Neither S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, were passed or approved by the Governor.

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

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

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Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1973, 63rd Leg., ch. 576, § 1.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2946, ch. 503, § 1.

Acts 1985, 69th Leg., ch. 566, § 1.
Acts 1985, 69th Leg., ch. 795, § 1.160.
Acts 1985, 69th Leg., ch. 921, § 3.
Acts 1987, 70th Leg., ch. 279, § 1(a), (b).
Acts 1987, 70th Leg., ch. 305, §§ 4, 5, 14(1), (2).
Acts 1989, 71st Leg., ch. 536, § 2.
Acts 1989, 71st Leg., ch. 641, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 1, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 2.

Cross References

Recycling, exemption from franchise tax, see V.T.C.A. Tax Code, § 171.085.
Removal and remedial action agreements, petroleum, see § 361.401.

[Sections 361.004 to 361.010 reserved for expansion]

**SUBCHAPTER B. POWERS AND DUTIES OF TEXAS DEPARTMENT
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Administrative Code References

Agriculture Department, pesticides, storage and disposal, see 4 TAC § 7.21.
Air Control Board,
 Control of air pollution from hazardous waste or solid waste management facilities, see 31 TAC § 120.1 et seq.
 Control of air pollution from municipal solid waste facilities, see 31 TAC § 121.1 et seq.
Department of Health,
 Formal hearing procedures, hearings on administrative penalties, see 25 TAC § 1.33.
 Solid waste management, see 25 TAC § 325.1 et seq.
Industrial solid waste, see 31 TAC § 335.1 et seq.
Water commission,
 Applications processing,
 Draft permit and compliance summary, see 31 TAC § 281.21.
 Initial review, see 31 TAC § 281.3.
 Consolidated permits, see 31 TAC § 305.1 et seq.
 Enforcement, see 31 TAC § 337.1 et seq.
 Industrial solid waste and municipal hazardous waste, see 31 TAC § 335.1 et seq.

§ 361.011. Department's Jurisdiction: Municipal Solid Waste

(a) The department is responsible for the management of municipal solid waste, excluding hazardous municipal waste, and shall coordinate municipal solid waste activities, excluding activities concerning hazardous municipal waste.

(b) The board of health shall guide the department in its management of municipal solid waste, excluding hazardous municipal waste.

(c) The department shall accomplish the purposes of this chapter by controlling all aspects of the management of municipal solid waste, excluding management of hazardous municipal waste, by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(d) The department has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

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(e) In matters under the department's jurisdiction, the department shall consult with:

(1) the commission concerning water pollution control and water quality aspects;

(2) the Texas Air Control Board¹ concerning air pollution control and ambient air quality aspects; and

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

(f) If referral is determined to be mandatory or appropriate, the agency shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The agency shall use all available enforcement options.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.02, eff. Sept. 1, 1991.

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

Historical and Statutory Notes

Sections 1.088, 1.090 to 1.092, 1.094, 1.095, 1.097, 1.0971 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, provides:

"Sec. 1.088. (a) Effective March 1, 1992:

"(1) all powers, duties, rights, and obligations of the Texas Department of Health pertaining to the treatment, handling, storage, and disposal of solid waste; the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water; the regulation of on-site sewage disposal systems; and the administration of on-site wastewater treatment research are transferred to the Texas Water Commission;

"(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health pertaining to solid waste, drinking water, on-site sewage disposal systems, and on-site wastewater treatment research are transferred to the Texas Water Commission; and

"(3) all appropriations to the Texas Department of Health pertaining to solid waste, drinking water, on-site sewage disposal systems, and on-site wastewater treatment research are automatically transferred to the Texas Water Commission.

"(b) The Texas Water Commission until August 31, 1993, and after that date the Texas Natural Resource Conservation Commission, is

the successor to the Texas Department of Health for the administration and enforcement of laws pertaining to the treatment, handling, storage, and disposal of solid waste, the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water, the regulation of on-site sewage disposal systems, the administration of on-site wastewater treatment research, and the disposal of radioactive substances and shall carry out those duties, responsibilities, and functions as provided by law, including Acts of the 72nd Legislature. Except as expressly provided by law, the rights, powers, and duties delegated to the Texas Department of Health for solid waste, drinking water, and disposal of radioactive substances are assigned to the Texas Water Commission until August 31, 1993, and after that date the Texas Natural Resource Conservation Commission."

"Sec. 1.090. (a) The change in name of the Texas Water Commission, the abolition of the Texas Air Control Board, the transfer of duties from the Texas Department of Health, and the abolition of the Texas Water Well Drillers Board do not affect or impair any act done or obligation, right, license, permit, rule, criterion, standard, or requirement, or penalty accrued or existing under former law, and that law remains in effect for any action concerning such an obligation, right, license, permit, rule, criterion, standard, requirement, or penalty. An action brought or proceeding com-

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menced before the effective date of this article, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the effective date of this article.

"(b) Administrative hearings on applications for permits and prehearing proceedings which had commenced prior to the effective date of this article shall not be delayed or continued as a result of this article or any resulting organizational changes.

"Sec. 1.091. Except as otherwise provided by this article, an agency any part of whose duties are transferred by this article to the Texas Natural Resource Conservation Commission shall continue to perform those duties and shall retain its agency name, notwithstanding any change in name to the Texas Natural Resource Conservation Commission in laws amended by this article, until September 1, 1993.

"Sec. 1.092. After September 1, 1993, any reference in law to the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health, acting jointly or in consultation with another agency relating to environmental protection duties that are transferred by this article to the Texas Natural Resource Conservation Commission, is a reference to the Texas Natural Resource Conservation Commission acting alone."

"Sec. 1.094. The officers and employees of the Texas Department of Health, Texas Water Commission, Texas Air Control Board, and Texas Water Well Drillers Board shall cooperate fully with the reorganization.

"Sec. 1.095. The State Purchasing and General Services Commission, to the greatest extent possible, shall locate the offices of the Texas Natural Resource Conservation Commission in a centralized location, taking into account the expiration dates or cancellation clauses of current leases entered into for offices of the agencies abolished and consolidated by this article. The State Purchasing and General Services Commission may not, without the prior written approval of the governor, enter into new leases or extend existing leases for a term beyond September 1, 1993, for the Texas Air Control Board or the Texas Water Commission."

"Sec. 1.097. (a) The Texas Natural Resource Conservation Commission shall appoint an executive director not later than November 1, 1993. Not later than January 1, 1994, the executive director shall appoint the deputy directors under Section 5.222, Water Code, as amended by this article.

"(b) In order to ensure a studied and orderly consolidation of functions and activities within the Texas Natural Resource Conservation Commission and to ensure that state efforts to comply with federal mandates, including the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), are not disrupted, the integration and consolidation of functions and facilities shall proceed according to the timetable provided by this section.

"(c) Not later than March 1, 1994, the executive director shall complete a study and report to the Texas Natural Resource Conservation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives on the desirability and feasibility of integrating agency support functions inherited from the Texas Air Control Board with the similar functions inherited from the Texas Water Commission. Support functions to be studied are accounting and budgeting systems, personnel services, public information and graphic arts, building grounds and vehicle services, and data processing systems used to support these services. Integration of these functions shall be completed to the extent practicable by September 1, 1994.

"(d) Not later than September 1, 1994, the executive director shall report to the Texas Natural Resource Conservation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives on the costs and benefits of consolidating laboratory functions and on the most cost-effective approach to integrating field offices transferred from the Texas Air Control Board and the Texas Water Commission. The study to be submitted by September 1, 1994, shall include a detailed analysis of the experiences of other states in organizing regional offices for a consolidated environmental agency, recommendations for establishing uniform enforcement policies and procedures within the agency, and an analysis of the most cost-effective structure for organizing and using agency attorneys who perform primarily enforcement functions. Recommendations on reorganization or integration of laboratories, regional offices, enforcement policies, and legal enforcement staff shall be implemented to the extent practicable not later than September 1, 1996.

"(e) Not later than January 1, 1995, the executive director shall report to the Texas Natural Resource Conservation Commission, the governor, the lieutenant governor, and the speaker of the house of representatives on the feasibility and desirability of streamlining permit procedures, including combined permits, consolidated permits, and alternative agency organizational structures that would promote more comprehensive and more expeditious review of proposed facilities. The study shall include a

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detailed analysis of the experiences of other states in developing streamlined permit procedures or accomplishing multimedia permit reviews, identification of specific problems encountered by permit applicants, identification of types of facilities or projects for which consolidated permits or multimedia review would be most beneficial and identification of state and federal statutory provisions that impede permit streamlining or multimedia review. Analysis of the costs and benefits of consolidating or integrating regulatory data bases and computer systems transferred from the Texas Air Control Board and the Texas Water Commission shall be included in the study. To the extent practicable any recommendations developed shall be implemented not later than September 1, 1997.

"(f) If any reorganization or transfer of responsibilities to another program of the Texas Natural Resource Conservation Commission results in the elimination or downgrading of positions, the percentage of eliminated or downgraded exempt positions and the percentage of eliminated or downgraded classified po-

sitions held by former employees of the Texas Air Control Board or the Texas Department of Health may not exceed the percentage those employees represent of the total number of exempt positions or the total number of classified positions within the Texas Natural Resource Conservation Commission at the time of the reorganization.

"Sec. 1.0971. In the consolidation of the state's environmental protection agencies, the Texas Natural Resource Conservation Commission shall provide for a reduction goal of at least 20 percent in the administrative work force that administers the state's environmental laws, as compared to the administrative work force administering the same laws in the 1989-1991 fiscal biennium."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2340, ch. 870, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Vernon's Ann.Civ.St. art. 4477-7, § 3(a).

Library References

Health and Environment ⇨25.5(5), (5.5),
(9).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 44, 61 to
153.

§ 361.012. Department's Jurisdiction: Municipal Solid Waste and Industrial Solid Waste

When both municipal solid waste and industrial solid waste, except Class I industrial solid waste that is not routinely collected with municipal solid waste and hazardous waste, are involved in any activity of management of solid waste, the department has jurisdiction over the activity.

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

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Revisor's Note

The revised law omits as unnecessary the source law provision concerning the department's powers and duties.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to
8, 10.
Acts 1985, 69th Leg., ch. 795, §§ 1.163, 7.001.
Vernon's Ann.Civ.St. art. 4477-7, § 3(c).

§ 361.013. Solid Waste Disposal and Transportation Fees

(a) Except as provided by Subsection (e), the department shall charge a fee on solid waste that is disposed of within this state. The fee is the greater of 50 cents per ton or, for compacted solid waste, 50 cents per cubic yard or, for uncompacted solid waste, 10 cents per cubic yard received for disposal at a landfill. The department shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The department may charge comparable fees for other means of solid waste disposal that are used.

(b) The department may raise or lower the fees established under Subsection (a) in accordance with department spending levels established by the legislature.

(c) The department shall charge an annual registration fee to a transporter of solid waste who is required to register with the department under rules adopted by the board of health. The board of health by rule shall adopt a fee schedule. The fee shall be reasonably related to the volume, the type, or both the volume and type of waste transported. The registration fee charged under this subsection may not be less than \$25 or more than \$500.

(d) The operator of each municipal solid waste facility shall maintain records and report to the department annually on the amount of solid waste that the facility transfers, processes, stores, treats, or disposes of. Each transporter required to register with the department shall maintain records and report to the department annually on the amount of solid waste that the transporter transports. The board of health by rule shall establish procedures for recordkeeping and reporting required under this subsection.

(e) The department may not charge a fee under Subsection (a) for scrap tires that are deposited in a designated recycling collection area at a landfill permitted by the commission or the department or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165 and that are temporarily stored for eventual recycling, reuse, or energy recovery.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, § 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, § 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, § 9.13, eff. Sept. 1, 1991.

Revisor's Note

(1) The source law requires the department to adopt a fee schedule. Since fees are adopted by rule, the revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

(2) The revised law omits the direction that fees collected be deposited to the credit of the general revenue fund because the State Funds Reform Act (Subchapter F, Chapter 404, Government Code) provides that requirement.

Historical and Statutory Notes

Section 9.43 of Acts 1991, 72nd Leg., 1st C.S., ch. 5, provides:

"(a) This article takes effect September 1, 1991. If this article may not take effect on that date under Article III, Section 39, of the Texas Constitution, this article takes effect December 1, 1991.

"(b) This article applies only to fees that become due on or after the effective date of this article. A fee that is collected on or after that date but that became due before that date is governed by the law as it existed when the fee became due, and the former law is continued in effect for this purpose."

Prior Laws:

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

Acts 1971, 62nd Leg., ch. 863.

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

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

8, 10.

Acts 1985, 69th Leg., ch. 239, § 54.

Acts 1985, 69th Leg., ch. 457, § 3.

Acts 1985, 69th Leg., ch. 566, § 7.

Acts 1985, 69th Leg., ch. 887, § 1.

Acts 1985, 69th Leg., ch. 931, art. 8, § 2

Acts 1989, 71st Leg., ch. 1143, §§ 5, 6.

Vernon's Ann.Civ.St. art. 4477-7, § 4(K)(2)

(4).

Notes of Decisions

Sludge 1

1. Sludge

Where owner of sludge abandoned it and it had no value and it was stipulated that it had no commercial or economic value, no certifi-

cate of convenience and necessity from Railroad Commission was required for hauling it. *Moore Indus. Disposal, Inc. v. City of Garland* (Civ.App.1979) 587 S.W.2d 430, ref. n.r.e.

No certificate of convenience and necessity from State Railroad Commission is required for hauling of material which did not constitute property. *Id.*

§ 361.014. Use of Solid Waste Fee Revenue

Revenue received by the department under Section 361.013 shall be deposited in the state treasury to the credit of the department. At least half the revenue is dedicated to the department's municipal solid waste permitting and enforcement programs and related support activities, and the balance of the revenue is dedicated to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) provision of technical assistance to local governments concerning solid waste management;

(3) establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

(4) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes);

(5) conduct of a statewide public awareness program concerning solid waste management;

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- (6) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;
- (7) conduct of research to promote the development and stimulation of markets for recycled waste products;
- (8) creation of a state municipal solid waste superfund for:
 - (A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and
 - (B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and
- (9) provision of funds for other programs that the board of health may consider appropriate to further the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, § 4, eff. Sept. 1, 1991.

Revisor's Note

The source law requires the fee schedule to be adopted by rule. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note (1) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

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

Acts 1971, 62nd Leg., ch. 863.

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

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

Acts 1985, 69th Leg., ch. 239, § 54.

Acts 1985, 69th Leg., ch. 457, § 3.

Acts 1985, 69th Leg., ch. 566, § 7.

Acts 1985, 69th Leg., ch. 887, § 1.

Acts 1985, 69th Leg., ch. 931, art. 8, § 2.

Acts 1989, 71st Leg., ch. 1143, §§ 5, 6.

Vernon's Ann.Civ.St. art. 4477-7, § 4(K)(3), (4).

§ 361.015. Department's Jurisdiction: Radioactive Waste

The department is the state agency under Chapter 401 that regulates radioactive waste activities not preemptively regulated by the federal government.

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

Revisor's Note

The source law refers to Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes). That statute is revised as Chapter 401 and the revised law reflects this change.

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1985, 69th Leg., ch. 795, § 7.001.
Vernon's Ann.Civ.St. art. 4477-7, § 3(d).

§ 361.0151. Recycling

(a) The department shall establish and administer a waste minimization and recycling office within the department that provides technical assistance to local governments concerning waste minimization and recycling.

(b) The department shall work in conjunction with the Texas Department of Commerce to pursue the development of markets for recycled materials, including composting products.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 4, eff. Sept. 6, 1990.

Historical and Statutory Notes**Prior Laws:**

Acts 1989, 71st Leg., ch. 641, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4D.

§ 361.016. Memorandum of Understanding by Board of Health

The board of health by rule shall adopt:

- (1) any memorandum of understanding between the department and any other state agency; and
- (2) any revision of a memorandum of understanding.

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

Revisor's Note

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

Historical and Statutory Notes**Prior Laws:**

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

Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1987, 70th Leg., ch. 279, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 3(i).

§ 361.017. Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste

(a) The commission is responsible for the management of industrial solid waste and hazardous municipal waste and shall coordinate industrial solid waste activities and hazardous municipal waste activities.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of industrial solid waste and hazardous municipal waste by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

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(c) The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

(d) In matters under the commission's jurisdiction, the commission shall consult with:

- (1) the department concerning the public health aspects;
- (2) the Texas Air Control Board¹ concerning the air pollution control and ambient air quality aspects; and
- (3) the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the agency's discretion, for the disposition of enforcement matters under this chapter.

(e) If referral is determined to be mandatory or appropriate, the agency shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The agency shall use all available enforcement options.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.03, eff. Sept. 1, 1991.

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

Historical and Statutory Notes

Prior Laws:

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

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

Acts 1977, 65th Leg., p. 2340, ch. 870, § 3.

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

Acts 1985, 69th Leg., ch. 795, §§ 1.163, 7.001.

Vernon's Ann.Civ.St. art. 4477-7, § 3(b).

Law Review Commentaries

Interstate waste: A key issue in resolving the national hazardous waste capacity crisis. B.J.

Wynne, III and Terri Hamby, 32 S.Tex.L.Rev. 601 (1991).

Notes of Decisions

Permits for hazardous waste disposal 1

1. Permits for hazardous waste disposal

Water Quality Board, replaced by Water Development Board and Department of Water Resources, had exclusive and original jurisdiction to determine question of changed conditions with respect to permit for disposal of

hazardous waste materials and, though it lost jurisdiction over subject matter of original order, had jurisdiction to revoke permit on basis of changed conditions after a public hearing even though city had filed an appeal in district court attacking permit as originally issued. South Texas Indus. Services, Inc. v. Texas Dept. of Water Resources (Civ.App.1978) 573 S.W.2d 302, ref. n.r.e.

§ 361.018. Commission's Jurisdiction Over Hazardous Waste Components of Radioactive Waste

(a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation of the manage-

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ment of hazardous waste components of radioactive waste under the department's jurisdiction.

(b) The commission shall consult with the department concerning regulation and management under this section.

(c) The commission may not adopt rules or engage in management activities under this section that conflict with state or federal laws and rules concerning the regulation of radioactive waste.

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

Historical and Statutory Notes**Prior Laws:**

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

Acts 1985, 69th Leg., ch. 795, § 7.001.
Vernon's Ann.Civ.St. art. 4477-7, § 3(d).

§ 361.019. Approval of Industrial Solid Waste Management in Municipal Solid Waste Facility

(a) Except as provided by Subsection (b), Class I nonhazardous industrial solid waste and small quantities of hazardous waste generated by conditionally exempt small quantity generators, as defined by the commission, may be accepted in a municipal solid waste facility if:

(1) authorized in writing by, or by rule of, the department with the written approval of, or by rule of, the commission; and

(2) the generator of the Class I nonhazardous waste certifies on an appropriate commission form that the waste is not a hazardous waste.

(b) Except as otherwise prohibited by this chapter, nonhazardous industrial solid waste generated by the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals shall be accepted, without authorization by the department or approval of the commission under Subsection (a), in a municipal solid waste facility that has previously been authorized to accept and has accepted Class I nonhazardous industrial solid wastes or Class II industrial solid wastes if the waste contains no free liquids, is not a hazardous waste as defined in Section 361.003, and satisfies other criteria that may be established by commission rule. Until the commission adopts rules establishing additional criteria, generators of this type of waste shall satisfy the two criteria described in this subsection when these wastes are disposed of in municipal solid waste facilities.

(c) Solid waste under the department's jurisdiction may be accepted in an industrial solid waste facility if authorized in writing by the commission with the written approval of the department.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 5, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 703, § 2, eff. Aug. 26, 1991.

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Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, §§ 1.163, 7.001.
Acts 1989, 71st Leg., ch. 536, § 3.
Vernon's Ann.Civ.St. art. 4477-7, § 3(c).

§ 361.020. State Solid Waste Plans

(a) The department shall develop a strategic state solid waste plan for all solid waste under its jurisdiction. The commission shall develop a strategic state solid waste plan for solid waste under its jurisdiction. The state agencies shall coordinate the solid waste plans developed.

(b) A strategic plan shall, for the kinds of waste under the jurisdiction of the agency preparing the plan, identify both short-term and long-term waste management problems, set short-term objectives as steps toward meeting long-term goals, and recommend specific actions to be taken within state times designed to address the identified problems and to achieve the stated objectives and goals. A plan shall reflect the state's preferred waste management methods as stated in Section 361.022 or 361.023 for the kinds of waste under the jurisdiction of the agency preparing the plan.

(c) A strategic plan shall include a short-range planning period of not more than five years, an intermediate planning period of not more than 10 years, and a long-range planning period of 11 years or longer.

(d) Each agency in preparing its strategic plan shall consult with:

- (1) the agency's waste minimization, recycling, or reduction division;
- (2) the waste reduction advisory committee; and
- (3) the interagency coordinating council.

(e) A strategic plan shall be updated every two years. Each agency continually shall collect and analyze data for use in its next updated plan and systematically shall monitor progress toward achieving existing plan objectives and goals. In preparing its updated plan, an agency shall examine previously and newly identified waste management problems, reevaluate its plan objectives and goals, and review and update its planning documents.

(f) Before the department or the commission adopts its strategic plan or makes significant amendments to the plan, the Texas Air Control Board¹ must have the opportunity to comment and make recommendations on the proposed plan or amendments and shall be given such reasonable time to do so as specified by the agency.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 6, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, § 20, eff. Sept. 1, 1991.

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

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Historical and Statutory Notes

Section 22 of the 1991 amendatory act provides:

"The Texas Department of Health and the Texas Water Commission each shall submit an updated strategic solid waste management plan as required by Section 20 of this Act not later than January 1, 1992."

Prior Laws:

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

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

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

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

Acts 1985, 69th Leg., ch. 795, §§ 1.161, 7.002.

Acts 1987, 70th Leg., ch. 632, § 2.

Acts 1989, 71st Leg., ch. 1143, § 1.

Vernon's Ann.Civ.St. art. 4477-7, § 4(b).

§ 361.021. Interagency Coordination Council

(a) The interagency coordination council shall coordinate the activities of its member agencies concerning the regulation of solid waste and solid waste management facilities and the enforcement of the applicable solid waste laws and rules.

(b) The council is composed of the executive head, or the executive head's designated representative, of the following agencies:

- (1) the commission;
- (2) the department;
- (3) the Texas Air Control Board;¹ and
- (4) the Railroad Commission of Texas.

(c) The commission's representative is the council chairman.

(d) The council shall meet at least quarterly to review the solid waste regulatory and enforcement activities of the previous quarter and coordinate planned activities in the interest of efficiency and cooperation, including:

- (1) the consideration of the use of waste exchange programs;
- (2) the establishment of a clearinghouse for scientific and engineering information concerning hazardous waste management;
- (3) the coordination of hazardous waste research and development activities;
- (4) the coordination and development of consistent agency rules relevant to the regulation of hazardous waste activities;
- (5) the evaluation of means to assist small quantity hazardous waste generators and affected communities in the effective and safe management and disposal of their regulated waste;
- (6) the assessment of any preapplication public interactions with applicants to evaluate their effectiveness and to consider developing rules to incorporate those activities if appropriate;
- (7) the consideration of the use of incentives to encourage waste minimization and reusing and recycling waste, and the use of resource recovery and detoxification equipment; and
- (8) the evaluation of the feasibility of household hazardous waste collection and disposal programs.

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(e) The chairman shall prepare a report summarizing each quarterly meeting. The report shall be submitted for approval by a majority of agencies represented on the council. The report is a public document.

Text of subsec. (f) as added by Acts 1991, 72nd Leg., ch. 296, § 2.02 and Acts 1991, 72nd Leg., ch. 590, § 2

(f) The council shall consult with and advise the pollution prevention council on all matters relating to pollution prevention.

Text of subsec. (f) as added by Acts 1991, 72nd Leg., ch. 303, § 21

(f) The council shall assist the department and the commission in preparing strategic state solid waste management plans required by Section 361.020.

(g) The council shall coordinate efforts to develop and update its member agency management information systems to improve access to high-level planning information.

(h) Not later than February 1 of each odd-numbered year, the council shall report to the legislature on:

- (1) the status of its member agencies in meeting stated agency goals;
- (2) documented efforts to implement the state's preferred waste management methods as stated in Sections 361.022 and 361.023;
- (3) local, regional, interstate, and international waste management planning concerns of interest to the state;
- (4) the coordination of federal mandates with state waste management plans; and
- (5) new waste management issues.

(i) The council may obtain assistance in preparing its reports from the staffs of its member agencies.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 2.02, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 303, § 21, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 590, § 2, eff. June 16, 1991.

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

Revisor's Note

The source law refers to the "department of water resources." In 1985, the name of the agency was changed to the Texas Water Commission. The revised law reflects this change and uses "commission" because Section 361.003 defines "commission" to mean the Texas Water Commission.

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 2.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Vernon's Ann.Civ.St. art. 4477-7, § 3(g)(1), (2).

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§ 361.0211. Pollution Prevention Council

(a) The commission, the department, the Texas Air Control Board,¹ and the Railroad Commission of Texas shall each designate an individual to coordinate source reduction and waste minimization efforts and programs in the appointing agency and represent the agency on the pollution prevention council. The individual designated shall report to that individual's executive director or assistant or deputy director.

(b) The pollution prevention council shall coordinate the activities of its represented agencies that concern source reduction and waste minimization to ensure the consistency of and to avoid duplication or conflict in programs.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.03, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, § 3, eff. June 16, 1991.

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

§ 361.0215. Waste Reduction Advisory Committee

(a) The waste reduction advisory committee is composed of nine members with a balanced representation of environmental and public interest groups and the regulated community.

(b) The committee shall advise the commission, pollution prevention council, and interagency coordination council on:

- (1) matters the council is required to consider under Section 361.021(d);
- (2) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;
- (3) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;
- (4) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and
- (5) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, § 2.04, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, § 4, eff. June 16, 1991.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 704, § 1.

Vernon's Ann.Civ.St. art. 4477-7, § 3(g)(3).

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Cross References

Pollution prevention, reduction at source, see § 361.431 et seq.

§ 361.0216. Office of Pollution Prevention

The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction and waste minimization activities of the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, § 2.05, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, § 5, eff. June 16, 1991.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 704, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 3(g)(4).

Cross References

Source reduction and waste minimization assistance, see § 361.509.

§ 361.022. Public Policy Concerning Municipal Solid Waste and Sludge

(a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of municipal solid waste and municipal sludge to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of municipal solid waste or municipal sludge, the methods listed under Subsections (b) and (c) are preferred to the extent economically and technologically feasible and considering the appropriateness of the method to the type of solid waste material or sludge generated, treated, disposed of, or stored.

(b) For municipal solid waste, not including sludge, the following methods are preferred, in the order listed:

- (1) source reduction and waste minimization;
- (2) reuse or recycling of waste;
- (3) treatment to destroy or reprocess waste to recover energy or other beneficial resources if the treatment does not threaten public health, safety, or the environment; or
- (4) land disposal.

(c) For municipal sludge, the following methods are preferred, in the order listed:

- (1) source reduction and minimization of sludge production and concentrations of heavy metals and other toxins in sludge;
- (2) treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of sludge;

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(3) marketing and distribution of sludge and sludge products if the marketing and distribution do not threaten public health, safety, or the environment;

(4) applying sludge to land for beneficial use;

(5) land treatment; or

(6) landfilling.

(d) In adopting rules to implement public policy concerning municipal solid waste management, the board of health shall consider the preference of municipal solid waste management methods under this section.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, § 1, eff. Sept. 1, 1991.

Revisor's Note

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.

Acts 1985, 69th Leg., ch. 566, §§ 2, 3.

Acts 1985, 69th Leg., ch. 795, § 7.001.

Acts 1987, 70th Leg., ch. 632, §§ 1, 2.

Vernon's Ann.Civ.St. art. 4477-7, §§ 3(e)(3), (4); 4(c).

Cross References

Comprehensive market development study, focus on waste management priorities, see § 361.423.

§ 361.023. Public Policy Concerning Hazardous Waste

(a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of hazardous waste to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of hazardous waste, the following methods are preferred to the extent economically and technologically feasible, in the order listed:

(1) source reduction;

(2) reuse or recycling of waste, or both;

(3) treatment to destroy hazardous characteristics;

(4) treatment to reduce hazardous characteristics;

(5) underground injection; and

(6) land disposal.

(b) Under Subsection (a)(3), on-site destruction is preferred, but it shall be evaluated in the context of other relevant factors such as transportation

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hazard, distribution of risk, quality of destruction, operator capability, and site suitability.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, § 2, eff. Sept. 1, 1991.

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1985, 69th Leg., ch. 795, § 7.001.

Acts 1985, 69th Leg., ch. 566, § 2.

Vernon's Ann.Civ.St. art. 4477-7, § 3(e)(1), (2).

Cross References

Factors to be considered in setting fees, see § 361.139.

Law Review Commentaries

Interstate waste: A key issue in resolving the national hazardous waste capacity crisis. B.J. Wynne, III and Terri Hamby, 32 S.Tex.L.Rev. 601 (1991).

§ 361.0231. Public Policy Concerning Adequate Capacity for Industrial and Hazardous Waste

(a) To protect the public health and environment, encourage economic development, and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

(b) "Adequate capacity" is the capacity necessary to manage the industrial and hazardous waste that remains after application, to the maximum extent economically and technologically feasible, of waste reduction techniques.

(c) It is further the state's policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 8, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 705, § 1.

Vernon's Ann.Civ.St. art. 4477-7, § 3(e)(2).

§ 361.0232. Assessment of Commercial Hazardous Waste Management Capacity

Text of section as added by Acts 1991, 72nd Leg., ch. 296, § 1.02 and Acts 1991, 72nd Leg., ch. 703, § 3

(a) Not later than January 1, 1992, the commission shall assess the need for commercial hazardous waste management capacity. In making the assessment, the commission shall consider the need for various technologies for

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commercial waste disposal and shall evaluate the need for disposal capacity on a technology-by-technology basis. At a minimum, the commission shall assess separately the need for metals recovery, solvent recovery, other recovery such as nonsolvent organic recovery and acid regeneration, incineration of liquids, incineration of sludge or solids, energy recovery, aqueous inorganic treatment, aqueous organic treatment, other treatment such as neutralization and gas incineration, sludge treatment, stabilization, land treatment, landfill, deep well injection, and other disposal such as ocean dumping and depositing wastes in salt mines. The commission shall adopt rules based on the assessment.

(b) In evaluating need and drafting rules under this section, the commission shall consider:

- (1) demand for commercial hazardous waste capacity in the state;
- (2) availability of commercial hazardous waste capacity to small quantity generators;
- (3) demand for noncommercial hazardous waste capacity in the state;
- (4) demand for nonhazardous waste capacity in the state;
- (5) permitted commercial hazardous waste capacity in the state;
- (6) permitted commercial nonhazardous waste capacity in the state;
- (7) anticipated waste reduction capability;
- (8) potential increases in substances defined as hazardous waste;
- (9) the preferences established by Section 361.023;
- (10) the effect of any rules adopted under this section on the status of federal funds and any federally delegable programs;

Text of subd. (11) as added by Acts 1991, 72nd Leg., ch. 296, § 1.02

- (11) the risks associated with the transportation of hazardous waste to the facility;

Text of subd. (11) as added by Acts 1991, 72nd Leg., ch. 703, § 3 and subd. (12) as added by Acts 1991, 72nd Leg., ch. 296, § 1.02

- (12) research on new technology; and

Text of subd. (12) as added by Acts 1991, 72nd Leg., ch. 703, § 3 and subd. (13) as added by Acts 1991, 72nd Leg., ch. 296, § 1.02

- (13) any other relevant information.

(c) In developing this assessment, the commission shall consider the need to maintain an appropriate reserve capacity in the state to assure continuity of hazardous waste management and an effective enforcement program while encouraging waste reduction and recycling and recovery.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.02, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 3, eff. Aug. 26, 1991.

For text of section as added by Acts 1991, 72nd Leg., ch. 336, § 1, see § 361.0232, post

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Section 1.24 of Acts 1991, 72nd Leg., ch. 296 provides:

"The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commercial hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt all rules, except rules required under Section 1.02 or 1.26 of this article, necessary to carry out the provisions of this article. The Texas Water Commission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.02 or 1.26 of this article, as expeditiously as possible, but no later than 120 days after the effective date of this Act. Pending adoption of all such rules, the commission and the board may not conduct any public hearing on a permit. The commission and the board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. Permits granted after the effective date of this article must comply fully with all rules adopted by the commission and the board pursuant to this article. For purposes of this section, 'commercial hazardous waste management facility' does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratorium does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity."

Section 1.25(f), (g) of Acts 1991, 72nd Leg., ch. 296 provides:

"(f) To enable the Texas Water Commission to meet the deadlines imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, and imposed by Section 1.25 of this article, rules required to be adopted under those provisions are not subject to Texas Employment Commission review.

"(g) To enable the Texas Water Commission to meet the deadline imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, a purchase by the commission of services necessary to prepare the assessment and rules required by that section is exempt from the purchasing requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes)."

Section 3.01 of Acts 1991, 72nd Leg., ch. 296 provides:

"This Act may be referred to as the Waste Reduction Policy Act of 1991."

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

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

§ 361.0232. Hazardous Waste Generated in Foreign Country

Text of section as added by Acts 1991, 72nd Leg., ch. 336, § 1

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

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

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

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- (1) recycling or reuse of the material; or
- (2) use of the material as a feedstock or ingredient in the production of a new product.
- (d) This section does not apply to waste transported or received for treatment, storage, or disposal at a hazardous waste management facility that is owned by the generator of the waste or by a parent, subsidiary, or affiliated corporation of the generator.
- (e) This section does not apply to waste received by:
 - (1) a producer of the product or material from which the waste is generated; or
 - (2) a parent, subsidiary, or affiliated corporation of such producer.
- (f) This section does not apply to waste generated in Mexico at an approved maquiladora facility to the extent that such waste:
 - (1) was generated as a result of the processing or fabrication of materials imported into Mexico from Texas on a temporary basis; and
 - (2) is required to be re-exported to the United States under Mexican law.

Added by Acts 1991, 72nd Leg., ch. 336, § 1, eff. Sept. 1, 1991.

For text of section as added by Acts 1991, 72nd Leg., ch. 296, § 1.02 and Acts 1991, 72nd Leg., ch. 703, § 3, see § 361.0232, ante

§ 361.0233. Assessment of Commercial Nonhazardous Solid Waste Disposal Capacity

- (a) Not later than March 1, 1996, the commission in consultation with the department shall assess the need for commercial nonhazardous solid waste disposal capacity in the state. In making the assessment, the commission and department shall consider the need for various technologies for commercial nonhazardous waste disposal and shall evaluate the need for disposal capacity on a technology-by-technology basis. The commission and the department shall adopt rules based on the assessment.
- (b) In evaluating need and drafting rules under this section, the commission and department shall consider:
 - (1) demand for nonhazardous waste capacity in the state;
 - (2) permitted commercial hazardous waste capacity in the state;
 - (3) permitted commercial nonhazardous waste capacity in the state;
 - (4) anticipated waste reduction capability;
 - (5) potential increases in substances defined as hazardous waste;
 - (6) the preferences established by Section 361.022;
 - (7) the effect of any rules adopted under this section on the status of federal funds and any federally delegable programs;
 - (8) research on new technology; and
 - (9) any other relevant information.

(c) The commission and department shall also consider:

- (1) the continued viability of industrial solid waste management in municipal solid waste facilities, under Section 361.019;¹
- (2) the geographic location of all commercial disposal facilities relative to the location of industrial solid waste generators; and
- (3) the risks associated with the transportation of industrial solid waste to the facility.²

Added by Acts 1991, 72nd Leg., ch. 296, § 1.02, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 3, eff. Aug. 26, 1991.

¹ Acts 1991, 72nd Leg., ch. 703, § 3 contained "and" following "361.019;"

² Subsection (c)(3) added by only Acts 1991, 72nd Leg., ch. 296, § 1.02.

Historical and Statutory Notes

Section 1.24 of Acts 1991, 72nd Leg., ch. 296 provides:

"The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commercial hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt all rules, except rules required under Section 1.02 or 1.26 of this article, necessary to carry out the provisions of this article. The Texas Water Commission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.02 or 1.26 of this article, as expeditiously as possible, but no later than 120 days after the effective date of this Act. Pending adoption of all such rules, the commission and the board may not conduct any public hearing on a permit. The commission and the board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. Permits granted after the effective date of this article must comply fully with all rules adopted by the commission and the board pursuant to this article. For purposes of this section, 'commercial hazardous waste management facility' does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratorium does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity."

Section 1.25(f), (g) of Acts 1991, 72nd Leg., ch. 296 provides:

"(f) To enable the Texas Water Commission to meet the deadlines imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, and imposed by Section 1.25 of this article, rules required to be adopted under those provisions are not subject to Texas Employment Commission review.

"(g) To enable the Texas Water Commission to meet the deadline imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, a purchase by the commission of services necessary to prepare the assessment and rules required by that section is exempt from the purchasing requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes)."

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

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

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§ 361.0234. Rules; Update of Rules and Assessments

(a) To expedite the consideration of permits for technologies that an assessment prepared under Section 361.0232 or 361.0233 determines to be most needed, the rules adopted by the commission or department shall provide for a permitting process that encourages the development of new and innovative disposal technologies, grants preferences considering the hierarchies established by Sections 361.022 and 361.023, emphasizes waste reduction efforts, and encourages applicants for permits for hazardous waste management facilities to include recycling and recovery components where appropriate.

(b) The commission and department, as appropriate, shall update the assessments and related rules at least every two years. In preparing an update of the assessment, the commission and department shall consider source reduction and waste minimization plans and reports submitted under Subchapter N.¹

Added by Acts 1991, 72nd Leg., ch. 296, § 1.02, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, § 3, eff. Aug. 26, 1991.

¹ The second sentence of subsec. (b) added only by Acts 1991, 72nd Leg., ch. 296, § 1.02.

Historical and Statutory Notes

Section 1.24 of Acts 1991, 72nd Leg., ch. 296 provides:

"The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commercial hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt all rules, except rules required under Section 1.02 or 1.26 of this article, necessary to carry out the provisions of this article. The Texas Water Commission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.02 or 1.26 of this article, as expeditiously as possible, but no later than 120 days after the effective date of this Act. Pending adoption of all such rules, the commission and the board may not conduct any public hearing on a permit. The commission and the board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. Permits granted after the effective date of this article must comply fully with all rules adopted by the commission and the board pursuant to this article. For purposes of this section, 'commercial hazardous waste management facility' does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratori-

um does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity."

Section 1.25(f), (g) of Acts 1991, 72nd Leg., ch. 296 provides:

"(f) To enable the Texas Water Commission to meet the deadlines imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, and imposed by Section 1.25 of this article, rules required to be adopted under those provisions are not subject to Texas Employment Commission review.

"(g) To enable the Texas Water Commission to meet the deadline imposed by Section 361.0232, Health and Safety Code, as added by Section 1.02 of this article, a purchase by the commission of services necessary to prepare the assessment and rules required by that section is exempt from the purchasing requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes)."

Sections 1.26 to 1.28 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.26. (a) To provide accountability and predictability in the processing of permit applications, the Texas Water Commission shall review its permit application processing procedures to determine the causes of delay, if any, in those activities. After identifying any obstacles to timely determination on permit applications, the commission shall adopt reasonable permit processing and hearing timeta-

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

"(b) As part of this study, the Texas Water Commission shall consider mechanisms for encouraging applicants and local communities to cooperate with each other in the siting of new hazardous waste management facilities. The commission shall, at a minimum, consider the creation of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant provides opportunities for citizens to ask questions about the permit application or the draft permit, and any necessary revisions to the local review process provided by Section 361.063, Health and Safety Code. The commis-

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

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

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

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

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

§ 361.024. Rules and Standards

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

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

(c) The minimum standards set by the commission for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.

(d) Rules adopted by the commission under Section 361.036 and Sections 361.097-361.108 for solid waste facilities may differ according to the type or hazard of hazardous waste managed and the type of waste management method used.

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

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Revisor's Note

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

(2) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

Historical and Statutory Notes

Prior Laws:

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

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

§ 361.025. Exempt Activities

(a) The commission and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities that are associated with oil and gas exploration, development, and production and are therefore exempt from regulation under this chapter.

(b) The list shall be adopted by rule and amended as necessary.

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

Revisor's Note

(1) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

(2) The source law, effective September 1, 1985, states that the list prepared by the commission and the Railroad Commission of Texas is a rule as defined by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the reference to APTRA, effective in 1976, as unnecessary because APTRA applies without an express statement to that effect.

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 2.
Acts 1985, 69th Leg., ch. 795, § 7.001.
Acts 1985, 69th Leg., ch. 931, art. 8, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 3(f).

§ 361.026. Assistance Provided by Department and Commission

(a) The department and the commission may individually or jointly:

(1) provide educational, advisory, and technical services concerning solid waste management to other state agencies, regional planning agencies, local governments, special districts, institutions, and individuals; and

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(2) assist other state agencies, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for:

(A) the development of solid waste facilities and management programs; and

(B) research to improve solid waste management.

(b) The department or the commission individually may engage in the programs and activities under this section only as the participation by it concerns the management and control of the solid waste under its jurisdiction.

(c) If the department and the commission do not participate jointly, each shall coordinate efforts undertaken individually so that separate but similar programs and activities are compatible.

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Vernon's Ann.Civ.St. art. 4477-7, § 4(h).

§ 361.027. Training of Solid Waste Technicians

(a) The department and the commission may each:

(1) develop a program to train solid waste technicians to improve the competency of those technicians; and

(2) issue letters of competency.

(b) The owner or operator of a solid waste facility is encouraged to employ as site manager a solid waste technician holding a letter of competency from the appropriate agency.

(c) The department and the commission may each:

(1) prescribe standards of training required for the program;

(2) determine the duration of the letter of competency;

(3) award one or more categories of letters of competency with each category reflecting a different degree of training or skill;

(4) require a reasonable, nonrefundable fee, in an amount determined from time to time by the agency, to be paid by participants, deposited to the credit of the general revenue fund, and used to administer the program;

(5) extend or renew letters of competency issued by the agency; and

(6) withdraw a letter of competency for good cause, which may include a violation of this chapter or a rule of the agency concerning the technician's duties and responsibilities.

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

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The revised law omits the direction that fees collected be deposited in the general revenue fund for the reason stated in Revisor's Note (2) under Section 361.013.

Historical and Statutory Notes**Prior Laws:**

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

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

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

Vernon's Ann.Civ.St. art. 4477-7, § 4(g).

§ 361.028. Industrial Solid and Hazardous Waste Materials Exchange

(a) The commission shall establish an industrial solid and hazardous waste materials exchange that provides for the exchange, between interested persons, of information concerning:

- (1) particular quantities of industrial solid or hazardous waste available in this state for recovery;
- (2) persons interested in acquiring certain types of industrial solid or hazardous waste for purposes of recovery; and
- (3) methods for the treatment and recovery of industrial solid or hazardous waste.

(b) The industrial solid and hazardous waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of information described by Subsection (a) for similar information from a program operated in another state.

(c) The commission may contract for a private person or public entity to establish or operate the industrial solid and hazardous waste materials exchange.

(d) The commission may prescribe rules concerning the establishment and operation of the industrial solid and hazardous waste exchange, including the setting of a necessary subscription fee to offset the cost of participation in the program.

(e) The commission may seek grants and contract support from federal and other sources to the extent possible and may accept gifts to support its purposes and programs.

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

Revisor's Note

The source law refers to the acceptance of "gifts and donations" by the commission. The reference to "donations" is omitted from the revised law because "donations" is included in the meaning of "gifts."

Historical and Statutory Notes**Prior Laws:**

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

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

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

Acts 1987, 70th Leg., ch. 139, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4A.

§ 361.029. Collection and Disposal of Household Materials That could be Classified as Hazardous Waste

(a) The board of health and the commission shall provide by rule for interested persons to engage in activities that involve the collection and disposal of household materials that could be classified as hazardous waste.

(b) The rules must specify the necessary requirements concerning the training of persons involved in the collection and disposal of those household materials.

(c) A person is not liable for damages as a result of any act or omission in the course of advertising, promoting, or distributing educational materials concerning the collection or disposal of those household materials in accordance with the rules. This subsection does not preclude liability for damages as a result of gross negligence of or intentional misconduct by the person.

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

Revisor's Note

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1987, 70th Leg., ch. 279, § 8.
Vernon's Ann.Civ.St. art. 4477-7, § 4(n).

§ 361.030. Federal Funds

The department or commission may individually or jointly accept funds from the federal government for purposes concerning solid waste management and spend money received from the federal government for those purposes in the manner prescribed by law and in accordance with agreements as are necessary and appropriate between the federal government and the agency.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Vernon's Ann.Civ.St. art. 4477-7, § 4(h).

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§ 361.031. Financial Assistance to Local Governments

(a) The department and the commission may administer and spend state funds provided to them by legislative appropriations, or otherwise, to make grants to local governments for:

- (1) solid waste planning;
- (2) installation of solid waste facilities; and
- (3) administration of solid waste programs.

(b) The grants made under this chapter shall be distributed in a manner determined by the state agency to which the appropriation is made.

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

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Vernon's Ann.Civ.St. art. 4477-7, § 4(i).

§ 361.032. Inspections; Right of Entry

(a) The department and the commission are each authorized to inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of the solid waste under the agency's jurisdiction.

(b) Agents or employees of the department, the commission, or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control.

(c) Agents or employees may not enter private property with management in residence without notifying the management, or the person in charge at the time, of their presence and presenting proper credentials.

(d) Agents or employees inspecting an establishment shall observe the establishment's rules on safety, internal security, and fire protection.

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

Revisor's Note

(1) The source law refers to "incorporated city or town." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

(2) The source law refers to "rules and regulations." The reference to "regulations" is omitted from the revised law because under the definitions section of the Code Construction Act (Section 311.005, Government Code) a rule includes a regulation.

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Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 795, § 1.165.
Vernon's Ann.Civ.St. art. 4477-7, §§ 4(d); 7(a).

Cross References

Registry and cleanup of certain hazardous waste facilities, investigations, see § 361.182.

§ 361.033. Inspections Required by Environmental Protection Agency

(a) The commission shall inspect regulated hazardous waste management and disposal facilities periodically as required by the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(b) In supplementing the inspections under Subsection (a), the commission shall give priority to inspecting and reinspecting those facilities, including generators, considered most likely to be in noncompliance or most likely to pose an environmental or public health threat, regardless of whether the facilities are characterized as major or non-major facilities.

(c) The commission may randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the United States Environmental Protection Agency.

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

Revisor's Note

The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 566, § 8.
Acts 1985, 69th Leg., ch. 795, § 1.165.
Vernon's Ann.Civ.St. art. 4477-7, § 7(c).

Cross References

Registry and cleanup of certain hazardous waste facilities, investigations, see § 361.182.

§ 361.034. Reports

(a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed industrial solid waste and hazardous waste fees authorized under Subchapter D¹ and related activities to determine the appropriateness of the fee structures;

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

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

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

(b) To develop the reports required under Subsection (a), the commission shall adopt rules requiring a person who generates, stores, treats, or disposes of industrial solid waste or hazardous waste to respond to a periodic survey detailing projections of waste volumes generated and handled, assumptions used as the basis for these projections, disposition, and remaining capacity, concerning a surveyed facility owned or operated by the person.

(c) The report due January 1, 1993, shall also include an evaluation of fees on products authorized under Section 361.138. This evaluation shall include an assessment of the needs of the state for the remediation of contaminated disposal sites identified under Subchapter F, Chapter 361, Health and Safety Code, the sources of contamination at these sites, and the revenues available under existing authority to apply to remediation efforts. The report shall include recommendations for possible additions to products subject to fees under Section 361.138 or other revenue measures which will adequately and equitably apportion the costs of remediation of contaminated sites. In making this evaluation, the commission shall consult with members of the regulated community, other businesses or industries subject to or affected by potential recommendations, and environmental or other public interest organizations.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 9, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, § 12, eff. Aug. 26, 1991.

¹ Section 361.131 et seq.

Revisor's Note

(1) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

(2) The revised law omits as executed the source law provision requiring that the report to the legislature and the governor be submitted on January 1, 1987.

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

(4) The revised law omits as executed the source law provision requiring that the first report be submitted by March 1, 1986.

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Prior Laws:

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

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

§ 361.035. Records and Reports; Disposal of Hazardous Waste

(a) The commission by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain records and to submit to the commission reports necessary for the commission to determine the amount of hazardous waste disposal.

(b) The commission by rule shall establish the date on which a report required by this section is to be submitted.

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

Revisor's Note

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

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

Historical and Statutory Notes

Prior Laws:

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

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

§ 361.036. Records and Manifests Required; Class I Industrial Solid Waste or Hazardous Waste

The commission by rule shall require a person who generates, transports, processes, stores, or disposes of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that the waste is transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

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

Historical and Statutory Notes

Prior Laws:

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

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

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State liability for indemnification, see V.T.C.A. Civil Practice and Remedies Code, § 104.002.

§ 361.037. Access to Hazardous Waste Records

(a) Authorized agents or employees of the commission have access to and may examine and copy during regular business hours any records pertaining to hazardous waste management and control.

(b) Except as provided by this subsection, records copied under Subsection (a) are public records. If the owner of the records shows to the satisfaction of the executive director that the records would divulge trade secrets if made public, the commission shall consider the copied records confidential.

(c) Subsection (b) does not require the commission to consider the composition or characteristics of solid waste being processed, stored, disposed of, or otherwise handled to be held confidential.

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

Historical and Statutory Notes**Prior Laws:**

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

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1985, 69th Leg., ch. 566, § 8.

Acts 1985, 69th Leg., ch. 795, § 1.165.

Vernon's Ann.Civ.St. art. 4477-7, § 7(b), (d).

Cross References

Registry and cleanup of certain hazardous waste facilities, investigations, see § 361.182.

§ 361.038. Annual Inspection Report

(a) In January of each year, the commission shall publish an annual inspection report that:

(1) summarizes the commission's inspection strategy and the results of inspections conducted during the previous fiscal year; and

(2) lists each hazardous waste treatment, storage, and disposal facility not inspected.

(b) The report must identify each hazardous waste facility inspected and include a list of:

(1) each facility that is in compliance with hazardous waste regulations, including each facility with an exemplary record of compliance over the preceding three years;

(2) each facility that has only minor or clerical violations; and

(3) each facility that has substantive, nonclerical violations, including each facility that has been adjudicated during the preceding three years to have committed substantive, nonclerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial endangerment to the public health and safety or the environment.

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(c) The report must identify the substantive, nonclerical violations and either summarize corrective actions or describe the status of unresolved violations.

(d) The report shall be submitted to the governor, lieutenant governor, and speaker of the house. The commission shall provide notice of the report's availability by publishing notice in the Texas Register.

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

Revisor's Note

The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 566, § 8.
Acts 1985, 69th Leg., ch. 795, § 1.165.
Vernon's Ann.Civ.St. art. 4477-7, § 7(e), (f), (g).

§ 361.039. Construction of Other Laws

Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the department, the commission, the Texas Air Control Board,¹ or a local government in performing the powers, functions, and duties vested in those governmental entities by other law.

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

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 13.

Acts 1985, 69th Leg., ch. 567, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 14.

[Sections 361.040 to 361.060 reserved for expansion]

SUBCHAPTER C. PERMITS

§ 361.061. Permits; Solid Waste Facility

Except as provided by Section 361.090 with respect to certain industrial solid waste, the department and the commission may each require and issue permits authorizing and governing the construction, operation, and maintenance.

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nance of the solid waste facilities used to store, process, or dispose of the solid waste over which it has jurisdiction under this chapter.

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

Historical and Statutory Notes

Section 2.36 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, provides:

"(a) A person who holds a construction permit under Section 382.051, Health and Safety Code, as it existed before the effective date of this article, and whose application for an operating permit under Section 382.054, Health and Safety Code, as it existed before the effective date of this article, is pending on December 1, 1991, may operate the facility or source for which the permit was issued as provided by Section 382.0511, Health and Safety Code, as added by this article, subject to the permitting and review and renewal requirements of Sections 382.054 and 382.055, Health and Safety Code, as amended by this article.

"(b) Any person required to obtain a federal operating permit under Section 382.054, Health and Safety Code, as amended by this article, who has commenced construction on or operated a facility or source for which that permit is required under a permit, special permit, exemption, or other authorization issued or applicable under Sections 361.061, 382.051, 382.054, 382.055, or 382.057, Health and Safety Code, as they existed before the effective date of this article, or under Sections 382.0511 and 382.0518, Health and Safety Code, as added by this article, and any regulations issued under those sections, may continue constructing or operating the facility or source for which the federal operating permit is required under the permit, special permit, exemption, or other authorization, subject to any applicable permit review and renewal requirement of Section 382.055, Health and Safety Code, as amended by this article, during the time between the date on which the permit requirement of Section 382.054, Health and Safety Code, as amended by this article, takes effect and the date on which the person obtains the required federal operating permit if the person timely

files an application for a federal operating permit.

"(c) An application for a federal operating permit required by Section 382.054, Health and Safety Code, as amended by this article, must be submitted to the Texas Natural Resource Conservation Commission not later than the latter of:

"(1) one year after the date on which the executive director of the Texas Natural Resource Conservation Commission publishes in the Texas Register notice of approval of the state's permitting program under Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) by the Administrator of the United States Environmental Protection Agency; or

"(2) one year after the date on which the facility or source for which a permit is required becomes subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549)."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 239, § 54.
Acts 1985, 69th Leg., ch. 457, § 1.
Acts 1985, 69th Leg., ch. 464, § 2.
Acts 1985, 69th Leg., ch. 566, §§ 4, 5.
Acts 1987, 70th Leg., ch. 279, §§ 3 to 6.
Acts 1987, 70th Leg., ch. 299, § 1.
Acts 1987, 70th Leg., ch. 638, §§ 7 to 9.
Acts 1987, 70th Leg., ch. 781, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e).

Library References

Health and Environment ⇐25.5(5), (5.5),
(9).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 44, 61 to
153.

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Notes of Decisions

Hearing 1

1. Hearing

Where condition attached to permit to develop solid waste disposal facility merely required that attachment, which was already included with permittee's original application pursuant

to Department of Health rules, be revised to comply with Commissioner's final order, but allowed excavation to begin once that revision was filed with Commissioner, without granting contestants further opportunity for hearing, contestants were not denied due process. *Browning-Ferris, Inc. v. Johnson* (App.1982) 644 S.W.2d 123, ref. n.r.e.

§ 361.062. Compatibility with County's Plan

(a) Before the department issues a permit to construct, operate, or maintain a solid waste facility to process, store, or dispose of solid waste in a county that has a local solid waste management plan approved by the board of health under Chapter 363 (Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act), the department must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local solid waste management plan.

(b) Until a local solid waste management plan is approved by the board of health and adopted by rule, the department may not consider the plan and its contents in the review of an application for a solid waste facility permit.

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

Revisor's Note

The source law refers to Article 4477-7c, Vernon's Texas Civil Statutes. That statute is revised as Chapter 363 and the revised law reflects this change.

Historical and Statutory Notes

Prior Laws:

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

Acts 1987, 70th Leg., ch. 279, § 9.
Vernon's Ann.Civ.St. art. 4477-7, § 4(o).

Notes of Decisions

In general 1

1. In general

Department of Health could consider any recommendation or action taken by the gov-

erning body of a city or county within whose jurisdiction proposed landfill site is located concerning proper land use and the propriety of application for permit for solid waste disposal facility. *Browning-Ferris, Inc. v. Texas Dept. of Health* (App.1981) 625 S.W.2d 764, ref. n.r.e.

§ 361.063. Preapplication Local Review Committee Process

(a) The department and the commission shall encourage applicants for solid waste facilities under the jurisdiction of the department or for hazardous waste management facilities to enter into agreements with affected persons to resolve issues of concern. During this process, persons are encour-

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aged to identify issues of concern and work with the applicant to resolve those issues.

(b) The agreement shall be made through participation in a local review committee process that includes a good faith effort to identify issues of concern, describe them to the applicant, and attempt to resolve those issues before the hearing on the permit application begins. A person is not required to be a local review committee member to participate in a local review committee process.

(c) If an applicant decides to participate in a local review committee process, the applicant must file with the department or commission, as appropriate, a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. A copy of the notice shall be delivered to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be delivered to the mayor of the municipality. The filing of the notice with the department or commission, as appropriate, initiates the preapplication review process.

(d) Not later than the 15th day after the date the notice of intent is filed under Subsection (c), the local review committee shall be appointed. The board of health and commission shall adopt rules concerning the composition and appointment of a local review committee.

(e) The local review committee shall meet not later than the 21st day after the date the notice of intent is filed under Subsection (c). The preapplication review process must continue for 90 days unless the process is shortened or lengthened by agreement between the applicant and the local review committee.

(f) The commission, as appropriate, may award to a person, other than the applicant, who has participated in the local review committee process under this section concerning an application for a hazardous waste management facility all or a part of the person's reasonable costs for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing concerning issues that are raised by the person in the local review committee process and that are unresolved at the beginning of the hearing on the permit application. The total amount of awards granted to all persons under this subsection concerning an application may not exceed \$25,000. In determining the appropriateness of the award, the commission shall consider whether:

- (1) the evidence or analysis provided by the studies, reports, and witnesses is significant to the evaluation of the application;
- (2) the evidence or analysis would otherwise not have been provided in the proceeding; and
- (3) the local review committee was established in accordance with commission rules.

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(g) Except as provided by Subsection (k), if an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs under Subsection (f), shall waive any requirement that the person affected has participated in a local review committee process.

(h) Except as provided by Subsection (k), costs awarded by the commission under Subsection (f) are assessed against the applicant. Rules shall be adopted for the award of those costs. Judicial review of an award of costs is under the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) A local review committee shall:

(1) interact with the applicant in a structured manner during the preapplication review stage of the permitting process and, if necessary, during the technical review stage of the permitting process to raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions.

(j) The applicant must submit the report required under Subsection (i)(2) to the agency with its permit application.

(k) If an applicant, after reasonable efforts to determine if local opposition exists to its proposed facility, including discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or because a local review committee is not established despite the applicant's good faith efforts, costs may not be assessed against the applicant under Subsection (f).

(l) This section does not apply to:

(1) a solid waste or hazardous waste management facility for which an application was filed, or that was authorized to operate, as of September 1, 1985;

(2) amendments to applications that were pending on September 1, 1987;
or

(3) changes in waste storage or processing operations at existing sites at which waste management activities were being conducted on September 1, 1987.

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

Revisor's Note

(1) The source law refers to "city." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

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

(3) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

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(4) The source law refers to the "effective date of such paragraph." The revised law substitutes "September 1, 1985," which is the effective date of the provision.

(5) The source law refers to amendments to "pending applications," and to existing sites at which waste management activities are "already being conducted." The revised law adds "on September 1, 1987," which is the effective date of the provision.

(6) In referring to an award of costs, the source law is inconsistent regarding which agency has authority. Since costs are awarded to an applicant for a hazardous waste management facility, which is under the jurisdiction of the commission, the revised law refers only to the commission.

Historical and Statutory Notes

Sections 1.26 to 1.28 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.26. (a) To provide accountability and predictability in the processing of permit applications, the Texas Water Commission shall review its permit application processing procedures to determine the causes of delay, if any, in those activities. After identifying any obstacles to timely determination on permit applications, the commission shall adopt reasonable permit processing and hearing timetables for permits that are determined to be administratively complete, with specific deadlines for each major step in the processing under the control of the commission and hearing procedures. Deadlines under the control of the commission do not include time the commission waits for the receipt of information from an applicant in order to properly review the application. Those deadlines under the control of the commission shall be met unless the executive director finds that the delay is necessary and lists the reasons that the deadlines cannot be met. It is the legislature's intent that permit applicants whose applications address technologies that are most needed as determined under Section 361.0234, Health and Safety Code, as added by this article, receive an ultimate determination on an administratively complete application, favorable or unfavorable, within two years of the date the application is determined to be administratively complete, excluding time not under the control of the commission.

"(b) As part of this study, the Texas Water Commission shall consider mechanisms for encouraging applicants and local communities to cooperate with each other in the siting of new

hazardous waste management facilities. The commission shall, at a minimum, consider the creation of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant provides opportunities for citizens to ask questions about the permit application or the draft permit, and any necessary revisions to the local review process provided by Section 361.063, Health and Safety Code. The commission shall report its findings, recommendations, and a summary of the rules adopted under Subsection (a) of this section to the legislature before January 1, 1993.

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

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

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 5.
Acts 1987, 70th Leg., ch. 279, § 6.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(12).

§ 361.0635. Preapplication Meeting

(a) If requested by a person who intends to file a permit application and with approval of the agencies concerned, the department, the commission,

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

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

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

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

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

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

Historical and Statutory Notes

Prior Laws:

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

§ 361.064. Permit Application Form and Procedures

(a) If the department or the commission exercises the power to issue permits for solid waste facilities under this subchapter, the agency exercising the power, to the extent not otherwise provided by this subchapter, shall prescribe:

- (1) the form of and reasonable requirements for the permit application; and
- (2) the procedures for processing the application.

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

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

Revisor's Note

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

Historical and Statutory Notes

Prior Laws:

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

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

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

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

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Acts 1983, 68th Leg., p. 2443, ch. 435, § 2. Acts 1987, 70th Leg., ch. 299, § 1.
Acts 1985, 69th Leg., ch. 457, § 1. Acts 1987, 70th Leg., ch. 638, §§ 7 to 9.
Acts 1985, 69th Leg., ch. 464, § 2. Acts 1987, 70th Leg., ch. 781, § 1.
Acts 1985, 69th Leg., ch. 566, §§ 4, 5. Acts 1989, 71st Leg., ch. 705, § 2.
Acts 1987, 70th Leg., ch. 279, §§ 3 to 6. Vernon's Ann.Civ.St. art. 4477-7, § 4(e).

§ 361.0641. Notice to State Senator and Representative

On receiving an application for, or notice of intent to file an application for, a permit to construct, operate, or maintain a facility to store, process, or dispose of solid waste or hazardous waste, the department or commission, as appropriate, shall send notice of the application or the notice of intent to the state senator and representative who represent the area in which the facility is or will be located.

Added by Acts 1991, 72nd Leg., ch. 236, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 3 of the 1991 Act provides: to a notice of intent to apply for a permit received by the Texas Department of Health, the Texas Water Commission, or the Texas Air Control Board on or after that date."

"This Act takes effect September 1, 1991, and applies only to an application for a permit or

§ 361.065. Repealed by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 3, § 1, eff. Sept. 6, 1990

Historical and Statutory Notes

The former section, relating to the permit application fee, was repealed to conform to Acts 1989, 71st Leg., ch. 1143, § 6, and was derived from:

Acts 1969, 61st Leg., p. 1320, ch. 405. Acts 1985, 69th Leg., ch. 239, § 54.
Acts 1971, 62nd Leg., p. 2631, ch. 863. Acts 1985, 69th Leg., ch. 457, § 3.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1. Acts 1985, 69th Leg., ch. 566, § 7.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10. Acts 1985, 69th Leg., ch. 887, § 1.
 Acts 1985, 69th Leg., ch. 931, art. 8, § 2.
 Vernon's Ann.Civ.St. art. 4477-7, § 4(k)(1), (4).
 Acts 1989, 71st Leg., ch. 678, § 1.

§ 361.066. Submission of Administratively Complete Permit Application

(a) An applicant must submit any portion of an application that the department or the commission determines is necessary to make the application administratively complete not later than the 270th day after the applicant receives notice from the department or the commission that the additional information or material is needed.

(b) If an applicant does not submit an administratively complete application as required by this section, the application is considered withdrawn, unless there are extenuating circumstances.

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

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Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 299, § 1.
Vernon's Ann.Civ.St. art. 4477-7,
§ 4(e)(4)(B).

§ 361.0665. Notice of Intent to Obtain Municipal Solid Waste Permit

(a) A person who applies for a municipal solid waste permit shall publish notice of intent to obtain a permit under this chapter at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

(b) Notice must include:

- (1) a description of the location or proposed location of the facility;
- (2) a statement that a person who may be affected by the facility or proposed facility is entitled to request a hearing from the department;
- (3) the manner in which the department may be contacted for further information; and
- (4) any other information that the department by rule requires.

(c) If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located as defined by department rule.

(d) In addition, the department shall publish notice in the Texas Register.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 13(a), eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 583, § 1.

Vernon's Ann.Civ.St. art. 4477-7,
§ 4(e)(4)(B).

§ 361.067. Review of Permit Application by Other Governmental Entities

(a) If the department or the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to:

- (1) the Texas Air Control Board;¹
- (2) the other state agency;
- (3) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and
- (4) the county judge and the health authority of the county in which the facility is located.

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(b) A governmental entity to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to which the application was originally submitted, to present comments and recommendations on the permit application before the agency acts on the application.

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

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

Revisor's Note

The source law refers to "city or town." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(1).

§ 361.068. When Application is Administratively Complete

A permit application is administratively complete when:

(1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the department or the commission; and

(2) the permit application is ready for technical review in accordance with the rules of the board of health or commission.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.

Acts 1985, 69th Leg., ch. 566, § 1.
Acts 1985, 69th Leg., ch. 795, § 1.160.
Acts 1987, 70th Leg., ch. 279, § 1(a), (b).
Vernon's Ann.Civ.St. art. 4477-7, § 2(1).

§ 361.069. Determination of Land Use Compatibility

The department or the commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088.

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

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Prior Laws:

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

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

§ 361.070. Sole Permit Hearing

(a) Except for a permit described under Section 361.071, all participation in the review of a permit application must be through one agency hearing, which shall be the sole permit hearing.

(b) The department or the commission shall conduct the hearing as the lead agency in accordance with the division of their jurisdiction.

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

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, § 3.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(i).

§ 361.071. Permit From Other Agencies

The owner or operator of a hazardous waste or solid waste management facility is not required to obtain a permit from any agency of the state other than the commission to store, process, treat, dispose of, or destroy solid waste or hazardous waste unless:

(1) a permit is required under Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549); or

(2) a permit is required by the Railroad Commission of Texas under Chapter 27, Water Code.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 2.17, eff. Sept. 1, 1991.

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.

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

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Acts 1983, 68th Leg., p. 2443, ch. 435, § 2. Vernon's Ann.Civ.St. art. 44
Acts 1985, 69th Leg., ch. 566, § 4. § 4(e)(4)(A)(i).
Acts 1987, 70th Leg., ch. 279, § 3.

§ 361.072. Joint Rules or Memoranda of Agreement With Department or Commission

(a) The Texas Air Control Board¹ and other agencies that might otherwise have jurisdiction for permitting hazardous or solid waste facilities shall enter into joint rules or memoranda of agreement with the department or commission.

(b) The joint rules or memoranda of agreement:

(1) must include the criteria that the Texas Air Control Board or other agency that might otherwise have jurisdiction may prescribe for use by the lead agency in addressing the concerns of the Texas Air Control Board or other agency in the permitting process; and

(2) shall at a minimum be consistent with the applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act, as amended, and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(c) Consistent with Section 361.070, the joint rules or memoranda of agreement must provide for the incorporation of provisions in the permits of the department or the commission for off-site waste management facilities concerning units that are:

(1) not otherwise subject to the permitting requirements of the department or commission; and

(2) subject to the permitting requirements of the Texas Air Control Board or other relevant agency.

(d) It is the intent of the legislature that:

(1) to the extent practicable in conformance with Section 361.070–361.078, the lead agency shall defer to the policies, rules, and interpretations of the Texas Air Control Board on the effect on air quality of the proposed hazardous waste or solid waste management activities; and

(2) the Texas Air Control Board remain the state's principal authority in matters of air pollution control.

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

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

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

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Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.

Acts 1985, 69th Leg., ch. 566, § 4.

Acts 1987, 70th Leg., ch. 279, §§ 3, 4.

Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(i), (ii).

§ 361.073. Air Control Board Review of Permit Application

(a) Except as otherwise provided by Sections 361.070–361.083, the Texas Air Control Board¹ shall perform a technical review of the air quality aspects of a permit application for a solid waste or a hazardous waste management facility concerning the criteria established under Section 361.072.

(b) Except for a permit application for a facility unit that incinerates or burns solid or hazardous waste, this section does not apply to an application for:

- (1) a municipal solid waste management facility;
- (2) a solid or hazardous waste management facility that existed on September 1, 1987; or
- (3) the expansion of a solid or hazardous waste management facility that existed on September 1, 1987.

(c) The Texas Air Control Board shall complete its review under this section and forward recommendations or proposed permit provisions to the lead agency within the time established by the lead agency rules for the completion of technical review of the application.

(d) The lead agency shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by the Texas Air Control Board, unless the lead agency determines that the recommendations or proposed permit provisions are less stringent than applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.). If the Texas Air Control Board's proposed permit provisions conflict with provisions proposed by the lead agency technical staff, the staffs of the two agencies shall attempt to resolve the conflict before the technical review of the application ends.

(e) If a contested case hearing on a permit application is not held by the lead agency, the Texas Air Control Board's recommendations or proposed permit provisions shall be incorporated into the permit issued by the lead agency. If a contested case hearing is held, the Texas Air Control Board shall develop and present the state's evidence and testimony concerning the air quality aspects of the application. Any party, including the lead agency, is entitled to cross-examine any testifying witness of the Texas Air Control Board.

(f) At the conclusion of the presentation of testimony, the hearing examiner shall give the Texas Air Control Board at least 30 days in which to submit:

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- (1) proposed findings of fact and conclusions of law; and
- (2) if applicable, proposed permit language, concerning the air quality aspects of the application that relate to the criteria established under Section 361.072.
- (g) The hearing examiner and the final decision-making body of the lead agency must accept the information submitted by the Texas Air Control Board under Subsection (f) unless that body finds that the recommendations of the Texas Air Control Board are not supported by a preponderance of the evidence.
- (h) The Texas Air Control Board may seek judicial review of the air quality aspects of a final decision of the lead agency. Both the lead agency and the Texas Air Control Board may enforce the terms of a permit issued by the lead agency concerning air quality.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 12(a), eff. Sept. 6, 1990.

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

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Section 2 of Acts 1989, 71st Leg., ch. 400, provides:

"This Act applies only to a permit application for a facility unit or other facility covered by Subparagraph (ii), Paragraph (A), Subdivision (4), Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by this Act, that is pending for consideration by the Texas Department of Health or the Texas Water Commission on the effective date of this Act or submitted to the department or commission on or after that date."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, § 4.
Acts 1989, 71st Leg., ch. 400, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(ii).

§ 361.074. Certain Permit Applications Not Affected

(a) Permit applications for hazardous waste or industrial solid waste management facilities for which contested evidentiary hearings have commenced at the Texas Air Control Board¹ before September 1, 1985, or appeals from decisions of the Texas Air Control Board on those applications, are not affected by Sections 361.072-361.073 and 361.075-361.078.

(b) An applicant may not withdraw a permit application to circumvent the intent of Subsection (a).

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 12(b), eff. Sept. 6, 1990.

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

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Revisor's Note

The source law refers to the "effective date of this provision." The revised law substitutes "September 1, 1985," which is the effective date.

Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, § 4.
Acts 1989, 71st Leg., ch. 400, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(ii).

§ 361.075. Delegation of Air Control Board Authority

The Texas Air Control Board¹ may delegate to its executive director the powers and duties conferred on the board under Sections 361.072 and 361.073.

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

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

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 279, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(ii).

§ 361.076. Other State Agencies' Review of Permit Application

(a) An agency other than the Texas Air Control Board¹ may review the lead agency's proposed action concerning a permit application and determine if its concerns have been adequately addressed if the agency:

- (1) might otherwise have jurisdiction for permitting the facility; and
- (2) requested an opportunity to review the lead agency's proposed action.

(b) The other agency may review the lead agency's proposed action:

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(1) after the lead agency completes its technical review of the permit application; and

(2) for a period of 20 days after the date on which the lead agency's technical review period ends.

(c) If the other agency determines that its concerns have not been adequately addressed, the other agency's sole remedy concerning the permit is to present its concerns in the permit proceedings of the lead agency.

(d) The other agency is entitled to:

(1) request a hearing;

(2) intervene as a matter of law;

(3) seek judicial review; and

(4) enforce each aspect of a lead agency permit concerning the other agency's jurisdiction.

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

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

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.

Acts 1985, 69th Leg., ch. 566, § 4.

Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(A)(iii).

§ 361.077. Exemption of Certain Facilities That Burn Hazardous Waste

Sections 361.070–361.076 do not apply to a facility that burns hazardous waste unless the facility is required to obtain a permit for the burning from the commission under rules adopted by the commission under a state hazardous waste regulatory program.

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

Repeal

Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.098(b) repeals this section effective Sept. 1, 1993

Revisor's Note

(1) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

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

Historical and Statutory Notes

Prior Laws:

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

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

§ 361.078. Maintenance of State Program Authorization Under Federal Law

This subchapter does not abridge, modify, or restrict the authority of the commission to adopt rules under Subchapters B and C,¹ to issue permits and to enforce the terms and conditions of the permits, concerning hazardous waste management to the extent necessary for the commission to receive and maintain state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

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

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

Revisor's Note

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

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

Historical and Statutory Notes

Prior Laws:

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

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

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

(a) Except as provided by Sections 361.080(b) and 361.081(c), the board of health and the commission by rule shall establish procedures for public notice and a public hearing under Section 361.080 or 361.081.

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

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(c) To improve the timeliness of notice to the public of a public hearing under Section 361.080 or 361.081, public notice of receipt of the permit application shall be provided at the time a permit application is submitted to the department or the commission.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 13(b), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, § 1.03, eff. June 7, 1991.

Revisor's Note

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.

Acts 1985, 69th Leg., ch. 566, § 4.

Acts 1987, 70th Leg., ch. 299, § 1.

Acts 1987, 70th Leg., ch. 781, § 1.

Acts 1989, 71st Leg., ch. 583, § 1.

Vernon's Ann.Civ.St. art. 4477-7,

§ 4(c)(4)(B).

§ 361.0791. Public Meeting and Notice Requirement

(a) Notwithstanding other law, the commission shall hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission, on request of a person affected or as otherwise required by commission rule, shall hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) if notice is provided as required by this section.

(c) A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission, department, or Texas Air Control Board, as appropriate, an affidavit 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.

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(e) 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:

- (1) the permit application number;
- (2) the applicant's name;
- (3) the proposed location of the facility; and
- (4) the location and availability of copies of the permit application.

(f) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.04, eff. June 7, 1991.

Historical and Statutory Notes

Section 1.25(b) of Acts 1991, 72nd Leg., ch. 296 provides:

"The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d), Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for

which a hearing has already been scheduled on the effective date of this article."

Section 1.25(c) of Acts 1991, 72nd Leg., ch. 296 provides:

"The provisions of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to applications already submitted to the permitting agency on the effective date of this article."

§ 361.080. Hearing Concerning Permit Application for Hazardous Industrial Solid Waste Facility

(a) A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located.

(b) Notice for a hearing session held under this section shall be provided in accordance with Section 361.0791.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.05, eff. June 7, 1991.

Historical and Statutory Notes

Sections 1.24, 1.26 to 1.28 of Acts 1991, 72nd Leg., ch. 296 provide:

"Sec. 1.24. The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commercial hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt all rules, except rules required under Section 1.02 or 1.26 of this article, necessary to carry out the provisions of this article. The Texas Water Com-

mission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.02 or 1.26 of this article, as expeditiously as possible, but no later than 120 days after the effective date of this Act. Pending adoption of all such rules, the commission and the board may not conduct any public hearing on a permit. The commission and the board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. Permits granted after the effective date of this article must comply fully with all

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rules adopted by the commission and the board pursuant to this article. For purposes of this section, 'commercial hazardous waste management facility' does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratorium does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity."

"Sec. 1.26. (a) To provide accountability and predictability in the processing of permit applications, the Texas Water Commission shall review its permit application processing procedures to determine the causes of delay, if any, in those activities. After identifying any obstacles to timely determination on permit applications, the commission shall adopt reasonable permit processing and hearing timetables for permits that are determined to be administratively complete, with specific deadlines for each major step in the processing under the control of the commission and hearing procedures. Deadlines under the control of the commission do not include time the commission waits for the receipt of information from an applicant in order to properly review the application. Those deadlines under the control of the commission shall be met unless the executive director finds that the delay is necessary and lists the reasons that the deadlines cannot be met. It is the legislature's intent that permit applicants whose applications address technologies that are most needed as determined under Section 361.0234, Health and Safety Code, as added by this article, receive an ultimate determination on an administratively complete application, favorable or unfavorable, within two years of the date the application is determined to be administratively complete, excluding time not under the control of the commission.

"(b) As part of this study, the Texas Water Commission shall consider mechanisms for encouraging applicants and local communities to cooperate with each other in the siting of new hazardous waste management facilities. The commission shall, at a minimum, consider the creation of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant provides opportunities for citizens to ask questions about the permit application or the draft permit, and any necessary revisions to the local review process provided by Section 361.063, Health and Safety Code. The commission shall report its findings, recommendations, and a summary of the rules adopted under Subsection (a) of this section to the legislature before January 1, 1993.

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

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

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 299, § 1.
Acts 1987, 70th Leg., ch. 781, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(B).

§ 361.081. Notice of Hearing Concerning Application for a Solid Waste Facility

(a) The department or the commission, whichever is appropriate, shall require the applicant to mail notice to each residential or business address located within one-half mile of a new solid waste management facility and to each owner of real property located within one-half mile of a new solid waste management facility listed in the real property appraisal records of the appraisal district in which the solid waste management facility is sought to be permitted as of the date the department or commission, whichever is appropriate, determines the permit application is administratively complete. The notice must be sent by mail and must be deposited with the United States

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postal service not more than 45 days or less than 30 days before the date of the hearing.

(b) The applicant must certify to the department or commission that the mailings were deposited as required by Subsection (a). Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section.

(c) In addition to the requirements of Subsection (a), the department or commission, whichever is appropriate, shall hold a public meeting and the applicant shall give notice concerning the application for a permit for a new hazardous waste management facility as provided by Section 361.0791.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 13(c), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, § 1.06, eff. June 7, 1991.

Revisor's Note

The source law, effective September 1, 1981, refers to hearings being conducted in accordance with rules adopted by the state agency and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the reference as unnecessary because the Administrative Procedure and Texas Register Act and the rules of practice of a state agency required to be adopted under Section 4 of that act apply without an express statement to that effect.

Historical and Statutory Notes

Section 4 of Acts 1989, 71st Leg., ch. 583, provides:

"(a) This Act takes effect September 1, 1989, and applies to an application for a permit under the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) that is submitted to the Texas Department of Health or the Texas Water Commission on or after September 1, 1989.

"(b) An application submitted before September 1, 1989, is covered by the law in effect at the time the application is submitted, and the former law is continued in effect for this purpose."

Section 1.25(b) of Acts 1991, 72nd Leg., ch. 296 provides:

"The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d),

Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 781, § 1.
Acts 1989, 71st Leg., ch. 583, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(B).

Notes of Decisions

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1. Laches

Although solid waste facility was very near completion and public hearing had been held

on permit application, action challenging facility was not barred by laches, where it appeared that plaintiffs who opposed its location did not know what was being constructed until a short time before bringing action and it did not appear that their failure to learn about it earlier was inexcusable. *Bean v. Southwestern*

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Waste Management Corp. (D.C.1979) 482
F.Supp. 673.

§ 361.082. Application for Hazardous Waste Permit; Notice and Hearing

(a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing. At a minimum, the rules shall include the public notice requirements set forth in Section 361.081.

(d) In addition to the hearing held under this section, the commission shall hold a public meeting and the applicant shall give notice as provided by Section 361.0791.

(e) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(f) An owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110 or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by United States Environmental Protection Agency or commission rules relative to termination of interim status.

(g) On request under Section 361.082 by a person affected for a hearing on the permit application, the applicant for a permit for a new hazardous waste management facility shall furnish a bond or other financial assurance authorized by the commission to guarantee payment of the costs of a person affected who provides information to the commission on the question of the issuance of the permit and who is entitled to those costs under an order made as provided by Section 361.0833. For applications involving commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of \$100,000. For applications that do not involve commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of \$20,000.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.07, eff. June 7, 1991.

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Historical and Statutory Notes

Section 1.25(b) of Acts 1991, 72nd Leg. ch. 296 provides:

"The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d), Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 457, § 2.
Acts 1985, 69th Leg., ch. 566, § 6.
Acts 1985, 69th Leg., ch. 795, § 1.162.
Vernon's Ann.Civ.St. art. 4477-7, § 4(f)(2).

§ 361.083. Evidence of Notice of Hearing

(a) Before the department or the commission may hear testimony in a contested case, evidence must be placed in the record to show that proper notice of the hearing was given to affected persons.

(b) If mailed notice to an affected person is required, the department, commission, or other party to the hearing shall place evidence in the record that notice was mailed to the affected person's address as shown by the appropriate appraisal district real property appraisal records at the time of the mailing.

(c) The affidavit of the department or commission employee responsible for the mailing of the notice, attesting that the notice was mailed to the address shown by the appraisal district real property appraisal records at the time of mailing, is prima facie evidence of proper mailing.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 14, eff. Sept. 6, 1990.

Revisor's Note

The source law, effective September 1, 1987, refers to a contested case as defined by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the reference to that act, because the definition of "contested case" in the act applies without an express statement to that effect.

Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Acts 1987, 70th Leg., ch. 638, § 7.
Acts 1989, 71st Leg., ch. 583, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(4)(C).

§ 361.0831. Ex Parte Contacts Prohibited

(a) Unless required for the disposition of ex parte matters authorized by law, a hearings examiner of the commission may not communicate, directly or indirectly, with any employee of the commission, any commissioner, or

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any party to a hearing conducted by the commission in connection with any issue of fact or law pertaining to a contested case in which the commission or party is involved.

(b) An employee of the commission, a commissioner, or a party to a hearing conducted by the commission may not attempt to influence the finding of facts or the application of law or rules by a hearings examiner of the commission except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate.

(c) If a prohibited contact is made, the hearings examiner shall notify all parties with a summary of that contact and notice of their opportunity to participate and shall give all parties an opportunity to respond.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.08, eff. June 7, 1991.

§ 361.0832. Proposal for Decision; Certified Issues; Reversal by Commission

(a) After hearing evidence and receiving legal arguments, a hearings examiner of the commission shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The hearings examiner shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. The commission shall consider and act on the proposal for decision.

(b) If a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, a hearings examiner, on joint motion of all parties or sua sponte, may certify those policy issues to the commission. A certification request must contain a statement of the policy issue to be determined and a statement of all relevant facts sufficient to show fully the nature of the controversy. The commission may receive written or oral statements from parties to the hearing or the hearings examiner on the policy issue certified. The commission must answer policy issues not later than the 60th day after the date of certification or, in its discretion, may decline to answer. If the commission fails to answer a policy issue within that period, the commission shall be deemed to have declined to answer. The hearings examiner shall proceed with the contested case and make a proposal for decision as required by Subsection (a).

(c) The commission may overturn an underlying finding of fact that serves as the basis for a decision in a contested case only if the commission finds that the finding was not supported by the great weight of the evidence.

(d) The commission may overturn a conclusion of law in a contested case only on the grounds that the conclusion was clearly erroneous in light of precedent and applicable rules.

(e) If a decision in a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, the

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commission may reject a proposal for decision as to the ultimate finding for reasons of policy only.

(f) The commission shall issue written rulings, orders, or decisions in all contested cases and shall fully explain in a ruling, order, or decision the reasoning and grounds for overturning each finding of fact or conclusion of law or for rejecting any proposal for decision on an ultimate finding.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.08, eff. June 7, 1991.

§ 361.0833. Costs for Information Provided by a Person Affected Regarding Hazardous Waste Permit

(a) After considering the factors in Subsection (e), the commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected in presenting information set out in Subsection (b) to the commission on the question of the issuance of the permit.

(b) Information for which an award of costs under Subsection (a) may be made includes:

- (1) technical studies of the area in which the new hazardous waste facility is proposed to be located;
- (2) expert testimony given at a hearing on the permit application; and
- (3) surveys of land use and potential use in the hazardous waste facility area.

(c) The commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected who presented information to the commission at a hearing showing that the applicant:

- (1) knowingly made false or misleading statements in the application;
 - (2) knowingly made false or misleading statements during the hearing;
- or

(3) failed to present information that the applicant had in its possession that would have materially affected the issues of fact and law on which the decision of the commission was based.

(d) The total costs awarded to all persons affected under Subsection (a) may not exceed \$100,000 for a new commercial hazardous waste management facility or \$20,000 for a new noncommercial hazardous waste management facility. The total costs awarded to all persons affected under Subsection (c) may not exceed \$150,000 for a new commercial hazardous waste management facility or \$30,000 for a new noncommercial hazardous waste management facility.

(e) In determining the appropriateness of an award under Subsection (a) or (c), the commission shall consider:

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(1) whether the information provided is material to the commission's determination to deny the permit or to require the applicant to make significant changes in the facility's design or operation; and

(2) whether the information would otherwise not have been presented to the commission while the commission is considering its decision.

(f) If the applicant fails or refuses to pay the amount of costs ordered not later than the 30th day after the date of entry of the final order granting payment of costs, the commission shall order the applicant's bond or other financial assurance forfeited in the amount of the costs ordered reimbursed under Subsection (a) or (c) up to and including the full amount of the bond or other financial assurance. The commission shall forward the forfeited amount to the person affected.

(g) If no request is made for an award of costs under this section or if a person affected is determined by the commission not to be entitled to an award of costs, the commission shall release the bond or other financial assurance of the applicant subject to an appeal of the denial of costs under this section. The commission shall also release the bond or other financial assurance on presentation of proof that the costs awarded have been paid.

(h) An order issued under this section is enforceable as a debt.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.09, eff. June 7, 1991.

§ 361.084. Compliance Summaries

(a) The board of health and the commission each by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities under each agency's jurisdiction.

(b) The compliance summaries shall be made available to the applicant and any interested person after the lead agency has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state in the preceding five years concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

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

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.10, eff. June 7, 1991.

Revisor's Note

The source law requires the department to adopt rules. The revised law assigns that duty to the board of health for the reason stated in Revisor's Note

(1) under Section 361.003.

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Historical and Statutory Notes

Prior Laws:

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

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

§ 361.085. Financial Assurance and Disclosure by Permit Applicant

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

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

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

(c) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(d) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(e) An agency may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

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

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ent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(g) Financial requirements established by the agency must at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(h) The department and the commission may each:

(1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and

(2) spend the funds from the financial assurance arrangement to close the facility.

(i) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the department or commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(j) In addition to other forms of financial assurance authorized by rules of the board of health or commission, the agency may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

(1) a bank chartered by the state or the federal government; and

(2) federally insured and its financial practices are regulated by the state or the federal government.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.12, eff. June 7, 1991.

Revisor's Note

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.

Acts 1985, 69th Leg., ch. 464, § 2.

Acts 1987, 70th Leg., ch. 279, § 5.

Acts 1987, 70th Leg., ch. 638, § 8.

Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(5).

Notes of Decisions

Surety bond 1

precedent to issuing a license to the owner or operator of a solid waste disposal site. Op. Atty.Gen. 1971, No. M-810.

1. Surety bond

The Texas Water Quality Board has no authority to require a surety bond as a condition

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§ 361.086. Separate Permit for Each Facility

- (a) A separate permit is required for each solid waste facility.
- (b) A permit under this subchapter may be issued only to the person in whose name the application is made and only for the facility described by the permit.
- (c) A permit may not be transferred without first giving written notice to and receiving written approval of the agency that issued the permit.

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

Historical and Statutory Notes

Prior Laws:

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

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

§ 361.0861. Separate Recycling Permit not Required

- (a) A permit holder or a municipal solid waste management facility that has or plans to have a recycling or waste separation facility established in conjunction with the permitted municipal solid waste management facility is not required to obtain for that recycling or waste separation facility a separate permit from the department or to apply for an amendment to an existing permit issued by the department.
- (b) A facility to which this section applies must register with the department in accordance with board of health rules and comply with board of health rules adopted under this chapter.
- (c) If a permit is otherwise required, the department shall expedite the permit proceeding if the applicant is seeking a permit for a solid waste management facility that employs an innovative, high technology method of waste disposition and recycling.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 15, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 641, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4B.

§ 361.087. Contents of Permit

A permit issued under this subchapter must include:

- (1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;
- (2) a legal description of the land on which the facility is located; and

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(3) the terms and conditions on which the permit is issued, including the duration of the permit.

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.

Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(2).

Notes of Decisions

Conditions 1

Texas Dept. of Health (App. 3 Dist.1987) 727 S.W.2d 61, ref. n.r.e.

1. Conditions

Special provisions in permit issued by Department of Health for solid waste sanitary landfill, requiring permit holder to upgrade access road and bridge to site in compliance with county specifications and subject to approval of county commissioners' court, and requiring that permit holder obtain approval from Department of Highways and Public Transportation for upgrading junction of county access road with highway, did not constitute unlawful reassignment by Department of Health of function committed to it by legislature; Department's authority under statute broadly includes "control of all aspects of municipal solid waste management," and special conditions did not require other public bodies to consider any health and environmental concerns before giving their approval, but only that access road be improved so that it met requirements of other public bodies. *Lipsey v.*

The Texas Water Quality Board is given broad discretion to issue rules and regulations governing proceedings before it for permits and orders and may require, as a condition to the issuance of a permit, that a feedlot owner submit evidence to establish that his operation will not cause wastes to pollute ground or surface waters. In any event, the Texas Water Quality Board is the agency designated by this article to control disposition of solid wastes. *Op.Atty.Gen. 1973, No. H-64.*

The Texas Water Quality Board has no general authority to engage in land-use planning, but it possesses authority under the Texas Water Quality Act (V.T.C.A. Water Code, § 21.001 et seq.), this article, and possibly the Disposal Well Act (V.T.C.A. Water Code, § 22.001 et seq.), to condition the granting of its permits to point or nonpoint sources of water contaminants upon proper site selection. *Op.Atty.Gen. 1976, No. H-802.*

§ 361.0871. Evaluation of Waste Stream; Land Use and Need

(a) Before a permit may be issued for a new hazardous waste management facility or amended to provide for capacity expansion, the applicant shall 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 commission may require.

(b) In evaluating a permit for a new hazardous waste management facility, the commission shall assess the impact of the proposed facility on local land use in the area, including any relevant land use plans in existence before publication 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. In determining whether a new hazardous waste management facility is compatible with local land use, the commission shall consider, at a minimum, the location of industrial and other waste-generating facilities in the area, the amounts of hazardous waste generated by those facilities, and the risks

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associated with the transportation of hazardous waste to the facility. If the commission determines that a proposed application is not compatible with local land use, it may deny the permit. The commission shall adopt rules to implement this subsection.

(c) In accordance with Section 361.0232, in evaluating an application for a new commercial hazardous waste management facility, the commission shall determine the need for the specific technology proposed in the facility to manage new or increased volumes of waste generated in the state. The commission rules adopted under Section 361.0232 shall identify the types of technology for which a commercial waste management need exists and shall provide for priority consideration in permit processing for those applications that address the highest priority need as identified by the commission.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.13, eff. June 7, 1991.

§ 361.088. Permit Issuance, Amendment, Extension and Renewal; Notice and Hearing

(a) The department or the commission may amend, extend, or renew a permit it issues in accordance with reasonable procedures prescribed by the department or commission, as appropriate.

(b) The procedures prescribed by Section 361.067 for a permit application apply to an application to amend, extend, or renew a permit.

(c) Before a permit is issued, amended, extended, or renewed, the agency to which the application is submitted shall provide an opportunity for a hearing to the applicant and persons affected. The agency may also hold a hearing on its own motion.

(d) In addition to providing an opportunity for a hearing held under this section, the department or the commission shall hold a public meeting and give notice as provided by Section 361.0791.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.14, eff. June 7, 1991.

Historical and Statutory Notes

Section 1.25(b) of Acts 1991, 72nd Leg., ch. 296 provides:

"The provisions of Sections 1.04, 1.06, and 1.14 of this article, the provision of Section 1.07 of this article that amends Subsection (d), Section 361.082, Health and Safety Code, and the provision of Section 1.22 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article."

Prior Laws:

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

Acts 1971, 62nd Leg., ch. 863.

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

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.

Acts 1985, 69th Leg., ch. 566, § 4.

Acts 1987, 70th Leg., ch. 279, §§ 3, 4.

Acts 1987, 70th Leg., ch. 299, § 1.

Acts 1987, 70th Leg., ch. 638, § 7.

Acts 1987, 70th Leg., ch. 781, § 1.

Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(3), (4).

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§ 361.0885. Denial of Application; Involvement of Former Employee

(a) After providing an opportunity for a hearing to an applicant, the state agency shall deny an application for the issuance, amendment, renewal, or transfer of a permit within its jurisdiction and may not issue, amend, renew, or transfer the permit if the state agency determines that a former employee:

(1) participated personally and substantially as a former employee in the state agency's review, evaluation, or processing of that application before leaving employment with the state agency; and

(2) after leaving employment with the state agency, provided assistance on the same application for the issuance, amendment, renewal, or transfer of a permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) Action taken under this section does not prejudice any application in which the former employee did not provide assistance.

(c) In this section, "former employee" means a person:

(1) who was previously employed by the state agency as a supervisory or exempt employee; and

(2) whose duties during employment with that state agency included involvement in or supervision of that state agency's review, evaluation, or processing of applications.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 16, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 1175, § 3.

Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(14).

§ 361.089. Permit Denial, Amendment, Suspension or Revocation; Notice and Hearing

(a) The department or commission may, for good cause, deny, amend, or revoke a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste.

(b) Except as provided by Section 361.110, the department or commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder or applicant and persons affected. The department or commission may also hold a hearing on its own motion.

(c) The board of health and the commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the department or commission and the applicable

provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) The department or commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if it is found, 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 agency, 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 this title or by a rule of the agency; or

(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 agency.

(f) Before denying, suspending, or revoking a permit under this section, the department or 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 this title or by a rule of the agency.

(g) 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 percent of the permit holder or applicant and at least 20 percent of another business which operates a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.11, eff. June 7, 1991.

Revisor's Note

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

(2) The source law, effective September 1, 1981, refers to hearings being conducted in accordance with rules adopted by the state agency and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the reference as unnecessary for the reason stated in the revisor's note under Section 361.081.

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Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 457, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(8).

Notes of Decisions

Grounds for denial 1

Grounds for revocation 2

1. Grounds for denial

Local opposition, standing alone, should have no part in Water Quality Board's determinations of whether to issue solid waste permits. *Starr County v. Starr Indus. Services, Inc.* (Civ.App.1979) 584 S.W.2d 352, ref. n.r.e.

Water Quality Board's denial of application for solid waste permit was arbitrary and capricious where applicant worked closely with Board's staff and apparently had complied with all staff's requirements and where Board at least partially based its decision on finding of local opposition to application. *Id.*

Evidence concerning stench from existing landfill, evidence that garbage attracted rats, flies, and stray dogs, evidence of outbreaks of fires at dump, evidence of presence of loose trash in the neighborhood, and evidence of potential damage to surface and subsurface waters near the proposed site for landfill un-

less corrective measures were developed sustained denial of application for solid waste disposal permit. *Browning-Ferris, Inc. v. Texas Dept. of Health* (App.1981) 625 S.W.2d 764 ref. n.r.e.

2. Grounds for revocation

Determination of Water Quality Board, now replaced by Water Development Board and Department of Water Resources, to revoke permit for disposal of hazardous waste materials was based on substantial evidence indicating that permittee had not only come to a state of disarray at time of revocation hearing with overwhelming debts and few assets, but had become involved in litigation over right to use surface at disposal site, and had engaged in uranium mining at site that affected movement of groundwater which, in turn, presented a water pollution problem in event wastes in question were buried as planned. *South Texas Indus. Services, Inc. v. Texas Dept. of Water Resources* (Civ.App.1978) 573 S.W.2d 302, ref. n.r.e.

§ 361.090. Regulation and Permitting of Certain Industrial Solid Waste Disposal

(a) The commission may not require a permit under this chapter for the collection, handling, storage, processing, and disposal of industrial solid waste that is disposed of within the boundaries of a tract of land that is:

(1) owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; and

(2) located within 50 miles from the plant or operation that is the source of the industrial solid waste.

(b) This section does not apply to:

(1) waste collected, handled, stored, processed, or disposed of with solid waste from any other source or sources; or

(2) hazardous waste.

(c) This section does not change or limit any authority the commission may have concerning:

(1) the requirement of permits and the control of water quality, or otherwise, under Chapter 26, Water Code; or

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(2) the authority under Section 361.303.

(d) The commission may adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this section applies to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

(e) The commission may require a person who disposes or plans to dispose of industrial solid waste and claims to be exempt under this section to submit to the commission information that is reasonably required to enable the commission to determine if this section applies to the waste disposal activity.

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

Revisor's Note

(1) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

(2) The revised law substitutes Section 361.303 for the source law reference to "Subsection (k) of this section." Section 361.303 is the revised version of Section 4(m) of the source law. Chapter 457, Acts of the 69th Legislature, Regular Session, 1985, added the reference to Subsection (k) and also added a new Subsection (k), which related to corrective action. Because of amendments to that act after 1985, the 1985 version of Section 4(k) is now Section 4(m) of the source law, and the revised law reflects that.

Historical and Statutory Notes

Prior Laws:

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

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

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

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

Acts 1985, 69th Leg., ch. 457, § 2.

Vernon's Ann.Civ.St. art. 4477-7, § 4(f)(1).

§ 361.091. Enclosed Containers or Vehicles; Permits; Inspections; Criminal Penalty

(a) A solid waste site or operation permitted as a Type IV landfill may not accept solid waste that is in a completely enclosed container or enclosed vehicle unless:

(1) the solid waste is transported on a route approved by the department and designed to eliminate putrescible, hazardous, or infectious waste;

(2) the solid waste is delivered to the site or operation on a date and time designated and approved by the department to eliminate putrescible, hazardous, or infectious waste;

(3) the transporter possesses a special permit issued by the department that includes the approved route, date, and time; and

(4) a department inspector is present to verify that the solid waste is free of putrescible, hazardous, or infectious waste.

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(b) The department may issue the special permit under this section and charge a reasonable fee to cover the costs of the permit. The board of health may adopt rules of procedure necessary to carry out the permit program.

(c) The department may employ one or more inspectors and other employees necessary to inspect and determine if Type IV landfills are free of putrescible, hazardous, or infectious waste. The department shall pay the compensation and expenses of inspectors and other necessary employees employed under this subsection, but the holders of Type IV landfill permits shall reimburse the department for the compensation and expenses as provided by this section.

(d) The department shall notify each holder of a Type IV landfill permit of the compensation and expenses that are required annually for the inspection of the landfills.

(e) The department shall hold a public hearing to determine the apportionment of the administration costs of the inspection program among the holders of Type IV landfill permits. After the hearing, the department shall equitably apportion the costs of the inspection program and issue an order assessing the annual costs against each permit holder. The department may provide for payments in installments and shall specify the date by which each payment must be made to the department.

(f) A holder of a permit issued under this section may not accept solid waste if the permit holder is delinquent in the payment of costs assessed under Subsection (e).

(g) The department's order assessing costs is effective until the department:

(1) modifies, revokes, or supersedes an order assessing costs with a subsequent order; or

(2) issues supplementary orders applicable to new Type IV landfill permits.

(h) The board of health may adopt rules necessary to carry out this section.

(i) An operator of a solid waste facility or a solid waste hauler commits an offense if the operator or hauler disposes of solid waste in a completely enclosed container or vehicle at a solid waste site or operation permitted as a Type IV landfill:

(1) without having in possession the special permit required by this section;

(2) on a date or time not authorized by the department; or

(3) without a department inspector present to verify that the solid waste is free of putrescible, hazardous, and infectious waste.

(j) An offense under this section is a Class B misdemeanor.

(k) Penalties under this section are in addition to any other penalty applicable under this chapter.

(l) This section does not apply to:

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(1) a stationary compactor that is at a specific location and that has an annual permit under this section issued by the department, on certification to the department by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the department to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the department that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.

(m) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

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

Revisor's Note

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1987, 70th Leg., ch. 1119, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4A.

Cross References

Punishment, Class B misdemeanor, see V.T.C.A. Penal Code, § 12.22.

§ 361.092. Permit for Extracting Materials From Certain Solid Waste Facilities

(a) The department and the commission may each require a permit to extract materials for energy and material recovery and for gas recovery from closed or inactive portions of a solid waste facility that has been used for disposal of municipal or industrial solid waste.

(b) The department or the commission shall issue a permit under this section in the same manner as provided by this subchapter for issuance of a permit to operate and maintain a solid waste facility.

(c) Each agency shall adopt standards necessary to ensure that the integrity of a solid waste facility is maintained.

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

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Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2947, ch. 503, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(j).

§ 361.093. Regulation and Permitting of Rendering Plants

(a) A manufacturing or processing establishment, commonly known as a rendering plant, that processes waste materials originating from animals and from materials of vegetable origin, including animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin, is subject to regulation under the industrial solid waste provisions of this chapter and may be regulated under Chapter 26, Water Code.

(b) If a rendering plant is owned by a person who operates the plant as an integral part of an establishment that manufactures or processes for animal or human consumption food derived wholly or partly from dead, slaughtered, or processed animals, the combined business may operate under a single permit issued under Chapter 26, Water Code.

(c) This section does not apply to a rendering plant in operation and production on or before August 27, 1973.

(d) In this section, "animals" includes only animals, poultry, and fish.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2341, ch. 870, §§ 4, 5.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(9).

§ 361.094. Permit Holder Exempt From Local License Requirements

If a permit is issued, amended, renewed, or extended by the department or the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or from a county.

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(6).

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**§ 361.095. Applicant for Hazardous Waste Management Facility Permit
Exempt From Local Permit**

(a) An applicant for a permit under this subchapter is not required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state.

(b) A local government or other political subdivision of the state may not adopt a rule or ordinance that conflicts with or is inconsistent with the requirements for hazardous waste management facilities as specified by the rules of the commission or by a permit issued by the commission.

(c) In an action to enforce a rule or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d) The validity or applicability of a rule or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule or ordinance, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an application for or the issuance of a permit for the siting, construction, or operation of a hazardous waste management facility.

(e) The local government or other political subdivision whose rule or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and the commission may become a party to the action.

(f) A declaratory judgment may be rendered even if the plaintiff has requested the commission, the local government or political subdivision, or another court to determine the validity or applicability of the rule or ordinance in question.

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

Revisor's Note

(1) The reference to "regulation" is omitted from the revised law for the reason stated in Revisor's Note (2) under Section 361.032.

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

(3) The source law refers to the "Uniform Declaratory Judgments Act (Article 2524-1, Vernon's Texas Civil Statutes)." That act is codified in Chapter 37, Civil Practice and Remedies Code, and the revised law reflects this change.

(4) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

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Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(6).

§ 361.096. Effect on Authority of Local Government or Other Political Subdivision

(a) Except as specifically provided by this chapter, this subchapter does not limit the powers and duties of a local government or other political subdivision of the state as conferred by this or other law.

(b) Sections 361.094 and 361.095 do not affect the power of a local government or other political subdivision to adopt or enforce building codes.

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(6).

§ 361.097. Condition on Issuance of Permit for Hazardous Waste Management Facility

The commission by rule shall condition the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on the selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater.

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

Historical and Statutory Notes

Prior Laws:

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

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

§ 361.098. Prohibition on Permit for Hazardous Waste Landfill in 100-Year Floodplain

(a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet.

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(b) The commission by rule may allow an areal expansion of a landfill in a 100-year floodplain if it can be demonstrated to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(c) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste land disposal unit if the unit is to be located in a 100-year floodplain, unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(d) The commission by rule shall require an applicant to provide sufficient information to assure that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation 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.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.15, eff. June 7, 1991.

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.

Acts 1985, 69th Leg., ch. 566, § 3.

Acts 1985, 69th Leg., ch. 795, § 7.002.

Acts 1987, 70th Leg., ch. 632, § 2.

Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.099. Prohibition on Permit for Hazardous Waste Management Unit in Wetlands

(a) The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the unit is to be located in wetlands, as defined by the commission.

(b) In this section and Section 361.100, "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility used to manage hazardous waste.

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.

Acts 1985, 69th Leg., ch. 566, § 3.

Acts 1985, 69th Leg., ch. 795, § 7.002.

Acts 1987, 70th Leg., ch. 632, § 2.

Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

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§ 361.100. Prohibition on Permit for Certain Hazardous Waste Management Units

The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit if the landfill:

(1) is in a floodplain of a perennial stream subject to not less than one percent chance of flooding in any year, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, V0, or V1-30; and

(2) receives hazardous waste for a fee.

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

Revisor's Note

The source law refers to the "effective date of this Act." The revised law substitutes "September 1, 1985," which is the effective date.

Historical and Statutory Notes

Prior Laws:

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

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

§ 361.101. Prohibition on Permit for Facility on Recharge Zone of Sole Source Aquifer

The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill, land treatment facility, surface impoundment, or waste pile, or areal expansion of such a facility, if the facility is to be located on the recharge zone of a sole source aquifer.

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

Historical and Statutory Notes

Prior Laws:

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

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

§ 361.1011. Prohibition on Permit for Facility Affected by Fault

If a fault exists within two and one-half miles from the proposed or existing wellbore of a Class I injection well or the area within the cone of influence, whichever is greater, or if a fault exists within 3,000 feet of a proposed hazardous waste management facility other than a Class I injection well or of a capacity expansion of an existing hazardous waste management facility, the burden is on the applicant, unless previously demonstrated to the commission or to the United States Environmental Protection Agency, to show:

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(b) The commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(c) For a subsequent areal expansion of a new commercial hazardous waste management facility that was required to comply with Subsection (b), distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(d) The commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries, consistent with the purposes of this chapter.

(e) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by Subsections (a), (b), (c), and (d) do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(f) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.17, eff. June 7, 1991.

Historical and Statutory Notes

Section 1.25(a), (d), (e) of Acts 1991, 72nd Leg., ch. 296 provides:

"(a) This article applies to any permit application, including permit applications for facilities operating under interim status, covered by

the terms of this article that is pending approval on the effective date of this article. Any application for renewal of or amendment to a permit for an existing facility that includes a request for authorization to increase capacity

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at the facility shall comply with the terms of this article; provided, however, that the provisions of Sections 1.16 and 1.17 of this article do not apply to an application for renewal of or amendment to a permit for an existing facility or to an existing facility burning waste-derived fuels under a Texas Water Commission or Texas Air Control Board permit on the effective date of this article."

"(d) The provisions of this article do not apply to applications that are on file on the effective date of this article and that are only for permits for the disposal of treatment residues and other nonincinerable wastes generated at the same facility or at facilities wholly owned by the applicant.

"(e) The provisions of this article apply to any application to amend a nonhazardous waste facility permit to accept hazardous waste that is pending approval on the effective date of this article and to all existing nonhazardous waste permits. If a nonhazardous waste facility has become a hazardous waste facility as a

result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. The provisions of this article and this subsection do not apply to a noncommercial facility that is required to obtain a hazardous waste permit under the federal toxicity characteristic rule."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.
Acts 1985, 69th Leg., ch. 566, § 3.
Acts 1985, 69th Leg., ch. 795, § 7.002.
Acts 1987, 70th Leg., ch. 632, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.103. Other Areas Unsuitable for Hazardous Waste Management Facility

The commission by rule shall define the characteristics that make other areas unsuitable for a hazardous waste management facility, including consideration of:

- (1) flood hazards;
- (2) discharge from or recharge to a groundwater aquifer;
- (3) soil conditions;
- (4) areas of direct drainage within one mile of a lake used to supply public drinking water;
- (5) active geological processes;
- (6) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or
- (7) critical habitat of endangered species.

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

Historical and Statutory Notes

Prior Laws:

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

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

§ 361.104. Prohibition on Permit for Facility in Unsuitable Area

The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing

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hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the commission under Section 361.103 unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics.

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

Historical and Statutory Notes**Prior Laws:**

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

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

§ 361.105. Petition by Local Government for Rule on Hazardous Waste Facility in Unsuitable Area

(a) The commission by rule shall allow a local government to petition the commission for a rule that restricts or prohibits the siting of a new hazardous waste disposal facility or other new hazardous waste management facility in an area including an area meeting one or more of the characteristics described by Section 361.103.

(b) A rule adopted under this section may not affect the siting of a new hazardous waste disposal facility or other new hazardous waste management facility if an application or a notice of intent to file an application concerning the facility is filed with the commission before the filing of a petition under this section.

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

Historical and Statutory Notes**Prior Laws:**

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

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

§ 361.106. Prohibition on Permit for Landfill if Alternative Exists

The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to the landfill that is reasonably available to manage the types and classes of hazardous waste that might be disposed of at the landfill.

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

Historical and Statutory Notes**Prior Laws:**

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

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

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

Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.

Acts 1985, 69th Leg., ch. 566, § 3.

Acts 1985, 69th Leg., ch. 795, § 7.002.

Acts 1987, 70th Leg., ch. 632, § 2.

Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.107. Hydrogeologic Report for Certain Hazardous Waste Facilities

The commission by rule shall require an applicant for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.

Acts 1985, 69th Leg., ch. 566, § 3.

Acts 1985, 69th Leg., ch. 795, § 7.002.

Acts 1987, 70th Leg., ch. 632, § 2.

Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.108. Engineering Report for Hazardous Waste Landfill

The commission by rule shall require an applicant for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering report evaluating:

- (1) the benefits, if any, associated with constructing the landfill above existing grade at the proposed site;
- (2) the costs associated with the above grade construction; and
- (3) the potential adverse effects, if any, that would be associated with the above grade construction.

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1983, 68th Leg., p. 4586, ch. 771, § 1.

Acts 1985, 69th Leg., ch. 566, § 3.

Acts 1985, 69th Leg., ch. 795, § 7.002.

Acts 1987, 70th Leg., ch. 632, § 2.

Vernon's Ann.Civ.St. art. 4477-7, § 4(c).

§ 361.109. Grant of Permit for Hazardous Waste Management Facility

(a) The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

- (1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;
- (2) the applicant for a proposed hazardous waste management facility has made a reasonable effort to ensure that the burden, if any, imposed by

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the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be minimized or mitigated; and

(3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed.

(b) If the commission determines that a burden on public roadways will be imposed by a new commercial hazardous waste management facility, the commission shall require the applicant to pay the cost of the improvements necessary to minimize or mitigate the burden. The applicant shall bear the costs associated with any required roadway improvements. The failure of a county or municipality to accept the funds and make the improvements shall not be the basis for denial or suspension of a permit.

(c) The commission shall not process an application for a permit for a new commercial hazardous waste management facility unless the applicant:

(1) has provided sufficient evidence that 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 to manage a reasonable worst-case emergency condition associated with the operation of the facility; or

(2) has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the commission to manage a reasonable worst-case emergency condition associated with the facility.

(d) If the applicant intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located to satisfy the requirements of Subsection (c), the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. If financial assurance is required, the financial assurance must be for the benefit of the county government or municipal government in the county in which the facility is located or proposed to be located, or both, and must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment. The commission shall adopt rules to ensure that the county or municipal government or other entity has sufficient emergency response capabilities before the facility first receives waste.

(e) A permit for a new commercial hazardous waste management facility shall not be granted unless the applicant provides a summary of its experience in hazardous waste management and in the particular hazardous waste management technology proposed for the application location. Any applicant without experience in the particular hazardous waste management technology

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shall conspicuously state that lack of experience in the application or a permit shall not be granted pursuant to the application. A permit may not be denied solely on the basis of lack of experience of the applicant.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.18, eff. June 7, 1991.

Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1987, 70th Leg., ch. 638, § 9.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(13).

§ 361.110. Termination of Authorization or Permit

Authorization to store, process, or dispose of hazardous waste under Section 361.082 or under a solid waste permit issued under this subchapter that has not been reissued in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), terminates as follows:

(1) in the case of each land disposal facility, on November 8, 1985, unless the facility owner or operator applied for a final determination concerning the issuance of a permit before that date and certified that the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements;

(2) in the case of each incinerator facility, on November 8, 1989, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1986; or

(3) in the case of any other solid waste facility, on November 8, 1992, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1988.

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

Revisor's Note

The revised law omits as executed the source law provision stating that a land disposal facility permit terminates on November 8, 1985, under certain circumstances.

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 457, § 3.
Vernon's Ann.Civ.St. art. 4477-7, § 4(l).

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§ 361.111. Department May Exempt Certain Municipal Facilities

The department may exempt from permit requirements a municipal solid waste management facility that:

- (1) is used in the transfer of municipal solid waste from a service area with a population of less than 5,000 to a solid waste processing or disposal site; and
- (2) complies with requirements established by board of health rule that are necessary to protect the public's health and the environment.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 17, eff. Sept. 6, 1990.

Historical and Statutory Notes**Prior Laws:**

Acts 1989, 71st Leg., ch. 641, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 4C.

§ 361.112. Storage, Transportation, and Disposal of Used or Scrap Tires

(a) A person may not store more than 500 used or scrap tires for any period on any publicly or privately owned property unless the person registers the storage site with the department. This subsection does not apply to the storage, protection, or production of agricultural commodities.

(b) The department may register a site to store more than 500 used or scrap tires.

(c) A person may not dispose of used or scrap tires in a facility that is not permitted by the department for that purpose.

(d) The department may issue a permit for a facility for the disposal of used or scrap tires.

(e) The board of health by rule shall adopt application forms and procedures for the registration and permitting processes authorized under this section.

(f) A person may not store more than 500 used or scrap tires or dispose of any quantity of used or scrap tires unless the tires are shredded, split, or quartered as provided by board of health rule. The department may grant an exception to this requirement if the department finds that circumstances warrant the exception. The prohibition provided by this subsection does not apply to a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission or the department or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165.

(g) The department shall require a person who transports used or scrap tires for storage or disposal to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site

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that is registered or to a disposal facility that is permitted under this section for that purpose.

(h) The department may amend, extend, transfer, or renew a permit issued under this section as provided by this chapter and board of health rule.

(i) The notice and hearing procedures provided by this subchapter apply to a permit issued, amended, extended, or renewed under this section.

(j) The department may, for good cause, revoke or amend a permit it issues under this section for reasons concerning public health, air or water pollution, land use, or violation of this section as provided by Section 361.089.

Text of subsec. (k) as added by Acts 1991, 72nd Leg., ch. 303, § 3

(k) The department may not register or issue a permit to a facility required by Section 361.479 to provide evidence of financial responsibility unless the facility has complied with that section.

Text of subsec. (k) as added by Acts 1991, 72nd Leg., ch. 370, § 3

(k) The department may not register or issue a permit to a facility required by Section 361.439 to provide evidence of financial responsibility unless the facility has complied with that section.

(l) In this section, "scrap tire" means a tire that can no longer be used for its original intended purpose.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 18, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 303, § 3, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, § 3, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 23 of Acts 1991, 72nd Leg., ch. 303, eff. Sept. 1, 1991, as amended by § 1.0261 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, eff. Aug. 26, 1991, provides:

"(a) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules required to administer Subchapter P, Chapter 361, Health and Safety Code, as added by this Act. Section 361.430, Health and Safety Code, applies only to newsprint purchased on or after January 1, 1992. The fees imposed by Section 361.472, Health and Safety Code, as added by this Act, apply only to a new tire sold on or after January 1, 1992. The payments authorized by Section 361.477, Health and Safety Code, as added by this Act, apply only to tires collected and shredded on or after April 1, 1992. The change in law made to Subsection (f), Section 361.112, Health and Safety Code, by this Act, applies only to a person who temporarily stores scrap tires on or after April 1, 1992.

"(b) Not later than January 1, 1992, the Railroad Commission of Texas shall adopt the rates

required by Section 361.431, Health and Safety Code, as added by this Act.

"(c) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by Chapter 371, Health and Safety Code, as added by this Act.

"(d) The change in law made by Subsection (k), Section 361.112, Health and Safety Code, as added by this Act, applies to an application for registration or a permit under Section 361.112 that is pending on, or submitted to the Texas Department of Health on or after January 1, 1992. A facility required to present evidence of financial responsibility under Section 361.479, Health and Safety Code, as added by this Act, that is registered or permitted under Section 361.112, Health and Safety Code, on January 1, 1992, shall comply with Section 361.479 not later than March 1, 1992.

"(e) Subsection (c), Article 6674i-1, Revised Statutes, and Sections 3.211 and 3.212, State Purchasing and General Services Act (Article

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601b, Vernon's Texas Civil Statutes), as amended or added by this Act, apply only to bids submitted on or after the effective date of this Act to the State Department of Highways and Public Transportation or to the State Purchasing and General Services Commission. A bid submitted before that date is governed by the law in effect at the time the bid was submitted, and the former law is continued in effect for that purpose.

"(f) The requirements of Article 6674i-2, Revised Statutes, as added by this Act, relating to recycled asphalt pavement do not affect a contract existing between the State Department of Highways and Public Transportation and another person, partnership, corporation, or government entity on the effective date of this Act.

"(g) Nothing in this Act shall influence or require a preference for one type of pavement design over another.

"(h) The prohibition on charging a tire collection fee under Section 361.480, Health and

Safety Code, as added by this Act, applies only to tires collected on or after April 1, 1992."

Section 5 of Acts 1991, 72nd Leg., ch. 370 provides:

"A facility required to present evidence of financial responsibility under Section 361.439, Health and Safety Code, as added by this Act, that is registered or permitted under Section 361.112, Health and Safety Code, on the effective date of this Act, shall comply with Section 361.439 not later than the 60th day after the date on which the Texas Board of Health adopts rules to implement that section."

Section 6(c) of Acts 1991, 72nd Leg., ch. 370 provides:

"The change in law made by Section 3 of this Act applies only to a person who temporarily stores scrap tires on or after April 1, 1992."

Prior Laws:

Acts 1989, 71st Leg., ch. 640, § 1.

Vernon's Ann.Civ.St. art. 4477-7, § 4C.

Cross References

Evidence of financial responsibility, see § 361.439.

Waste tire recycling program, see § 361.471.

§ 361.113. Permit Conditions for the Operation of Hazardous Waste Management Facilities

(a) The commission by rule shall establish requirements for commercial hazardous waste management facilities that will provide the opportunity for periodic monitoring of the operation of those facilities in order to assure that the facilities are in compliance with the terms of their respective permits

(b) In proposing and adopting rules to implement this section, the commission shall consider, at a minimum, a requirement that the facility owner or operator fund an independent inspector for the facility, a requirement for an independent annual environmental audit of the facility, a procedure for considering comments from affected parties on the selection of the independent inspector, a requirement that operational personnel at the permitted facility be certified by the state as competent to operate the size and type of hazardous waste management facility for which the permit has been issued, and a requirement that the facility provide for fence line and ambient air quality monitoring.

(c) A requirement that is established by commission rule to implement this section shall be incorporated as appropriate into the conditions of a permit for a new hazardous waste management facility when the permit is issued and shall be incorporated into the conditions of a permit for an existing hazardous waste management facility when the permit is renewed.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.19, eff. June 7, 1991.

§ 361.114. Grant of Permit for Disposal of Hazardous Waste Into Salt Domes

(a) The commission may not issue a permit for a hazardous waste injection well in a solution-mined salt dome cavern unless the United States Environmental Protection Agency and the commission determine that sufficient rules are in place to regulate that activity.

(b) Before issuing a permit for a hazardous waste injection well in a solution-mined salt dome cavern, the commission by order must find that there is an urgent public necessity for the hazardous waste injection well. The commission, in determining whether an urgent public necessity exists for the permitting of the hazardous waste injection well in a solution-mined salt dome cavern, must find that:

(1) the injection well will be designed, constructed, and operated in a manner that provides at least the same degree of safety as required of other currently operating hazardous waste disposal technologies;

(2) consistent with the need and desire to manage within the state hazardous wastes generated in the state, there is a substantial or obvious public need for additional hazardous waste disposal capacity and the hazardous waste injection well will contribute additional capacity toward servicing that need;

(3) the injection well will be constructed and operated in a manner so as to safeguard public health and welfare and protect physical property and the environment;

(4) the applicant has demonstrated that groundwater and surface waters, including public water supplies, will be protected from the release of hazardous waste from the salt-dome waste containment cavern; and

(5) any other criteria required by the commission to satisfy that the test of urgency has been met.

Added by Acts 1991, 72nd Leg., ch. 296, § 1.20, eff. June 7, 1991.

[Sections 361.115 to 361.130 reserved for expansion]

**SUBCHAPTER D. INDUSTRIAL SOLID WASTE AND
HAZARDOUS WASTE GENERATION, FACILITY,
AND MANAGEMENT; FEES AND FUNDS**

Historical and Statutory Notes

Acts 1991, 72nd Leg., ch. 710, § 3, in the Waste And", and substituted "Management" for subchapter heading, inserted "Industrial Solid "Disposal".

Cross References

Performance report summary, see § 361.034.

§ 361.131. Definitions

In this subchapter:

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(1) "Captured facility" means a manufacturing or production facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed, or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

(2) "Commercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for a charge.

(3) "Dry weight" means the weight of constituents other than water.

(4) "Generator " means a person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

(5) "Hazardous waste" means solid waste not otherwise exempt that is identified or listed as hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6901 et seq.).

(6) "Land disposal" does not include the normal application of agricultural chemicals or fertilizers.

(7) "Land disposal facility" includes:

(A) a landfill;

(B) a surface impoundment, excluding an impoundment treating or storing waste that is disposed of under Chapter 26 or 27, Water Code;

(C) a waste pile;

(D) a facility at which land treatment, land farming, or a land application process is used; and

(E) an injection well.

(8) "Noncommercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for no charge or that stores, processes, or disposes of waste generated on site.

(9) "Primary metals high volume, low-hazard waste" is hazardous waste from the extraction, beneficiation, and processing of ores, minerals, or scrap metal and whose constituents are subject to the criteria for the identification or listing as a hazardous waste under Section 3001(a) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and account for 10 percent or less of its total dry weight volume.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 19, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 692, § 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 710, § 4, eff. Aug. 26, 1991.

Deletion

Former subd. (4), redesignated as subd. (5) by Acts 1991, 72nd Leg., ch. 710, § 4, was deleted by Acts 1991, 72nd Leg., ch. 692, § 1.

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Revisor's Note

(1) The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

(2) The source law refers to "the effective date of this Act." The revised law substitutes "August 26, 1985," which is the effective date.

Historical and Statutory Notes

Sections 1 and 2 of Acts 1991, 72nd Leg., ch. 710 provide:

"Sec. 1. Legislative Findings. The legislature finds that:

"(a) the present mechanisms for funding the state's industrial solid waste and hazardous waste programs do not adequately and equitably support these regulatory efforts;

"(b) certain facilities at which hazardous substances have been improperly disposed constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment;

"(c) improper management and disposal of products containing hazardous constituents represent a threat of contamination to the water resources of the state;

"(d) dependable sources of funds are required to provide for the adequate regulation of industrial solid waste and hazardous waste activities, the remediation of contaminated sites and the control of releases of hazardous substances; and

"(e) the financial support of the state's efforts to remediate and control pollution from hazardous substances should be based on the products, services, and economic activities which most clearly represent the sources and causes of contamination.

"Sec. 2. Purpose. The legislature declares that it is the policy of this state and the purpose of this Act to:

"(a) ensure that sufficient funds are available for the support of a program of industrial solid waste and hazardous waste regulation which protects human health and the environment and is consistent with current federal and state regulatory authority;

"(b) supplement available sources of funds to ensure that appropriate removal and remedial action are undertaken at sites at which hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action;

"(c) enable the state to assist local governments or other concerns in the proper management and disposition of products or materials with hazardous constituents that are related to contaminated disposal sites or other pollution problems;

"(d) relate the state's costs of regulating the management of hazardous substances and remediation and prevention of pollution to particular products containing hazardous substances; and

"(e) ensure that all fee revenue programs authorized under Subchapter D, Chapter 361, Health and Safety Code, clearly support recycling and reuse as desirable methods of waste management."

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 1144, § 3.

Vernon's Ann.Civ.St. art. 4477-7, § 12(a).

Cross References

Pollution prevention, reduction at source, see § 361.431 et seq.

§ 361.132. Hazardous and Solid Waste Fees Fund

(a) The hazardous and solid waste fees fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

(1) fees imposed on generators of industrial solid waste or hazardous waste under Section 361.134;

(2) fees imposed on owners or operators of permitted industrial solid waste or hazardous waste facilities, or owners or operators of industrial

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solid waste or hazardous waste facilities subject to the requirement of permit authorization, under Section 361.135;

(3) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for noncommercial and commercial management or disposal of hazardous waste under Section 361.136;

(4) fees imposed on applicants for industrial solid waste and hazardous waste permits under Section 361.137; and

(5) interest and penalties imposed under Section 361.140 for late payment of industrial solid waste and hazardous waste fees authorized under this subchapter.

(c) Except as provided by Section 361.136(1)(1), the commission may use the money in the fund only for regulation of industrial solid and hazardous waste under this chapter, including payment to other state agencies for services provided under contract concerning enforcement of this chapter.

(d) The total amount of generation fees and facility fees collected and deposited to the credit of the hazardous and solid waste fees fund in a fiscal year may not be less than \$4.5 million or more than \$6.0 million.

(e) Any unobligated balance in the fund in excess of \$1 million at the end of the state fiscal year shall be transferred to the hazardous and solid waste remediation fee fund.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 20, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, § 4, eff. Aug. 26, 1991.

Revisor's Note

The source law reference to the funds as special is omitted as unnecessary because that term does not add to the meaning or effect of the fund created.

Historical and Statutory Notes

Section 13 of the 1991 amendatory act provides:

"This Act takes effect immediately except that the fees changed or added by this Act shall not be due prior to September 1, 1991."

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1987, 70th Leg., ch. 279, §§ 15, 17.

Acts 1989, 71st Leg., ch. 1144, § 2.

Vernon's Ann.Civ.St. art. 4477-7, §§ 11a(a),
(b); 12(b), (c).

§ 361.133. Hazardous and Solid Waste Remediation Fee Fund

(a) The hazardous and solid waste remediation fee fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

(1) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for commercial and noncommercial management or disposal of hazardous waste under Section 361.136 and fees imposed under Section 361.138;

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(2) interest and penalties imposed under Section 361.140 for late payment of a fee or late filing of a report;

(3) money paid by a person liable for facility cleanup and maintenance under Section 361.197;

(4) the interest received from the investment of this fund, in accounts under the charge of the treasurer, to be credited pro rata to the hazardous and solid waste remediation fee fund; and

(5) monies transferred from other agencies under provisions of this code or grants from any person made for the purpose of remediation of facilities under this chapter.

(c) The commission may use the money collected and deposited to the credit of the fund under this section, including interest credited under Subsection (b)(4), only for:

(1) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable person, independent third person, or the federal government are not sufficient for the removal or remedial action;

(2) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if:

(A) funds from a liable person have been collected and deposited to the credit of the fund for that purpose; or

(B) funds from a liable person, independent third person, or the federal government are not sufficient for the maintenance;

(3) expenses concerning compliance with:

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) as amended;

(B) the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(C) Subchapters F and I;¹

(4) expenses concerning the regulation and management of household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances; and

(5) expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment.

(d) The commission shall establish the fee rates for waste management under Section 361.136 and revise them as necessary so that the amount collected each year equals between \$12 million and \$16 million after making payments to counties under Section 361.136(1)(1).

(e) The commission shall monitor the unobligated balance in the hazardous and solid waste remediation fee fund and all sources of revenue to the fund and may adjust the amount of fees collected under Subsection (d) of this

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section and Section 361.138 of this chapter, within prescribed limits, to maintain an unobligated balance of at least \$5 million and no more than \$25 million at the end of each fiscal year.

(f) For the purpose of Subsection (e) of this section, the unobligated balance in the hazardous and solid waste remediation fee fund shall be determined by subtracting from the cash balance of the fund at the end of each quarter:

(1) the total of all operating expenses encumbered by the commission from the fund;

(2) the sum of the total balances remaining on all contracts entered into by the commission to be paid from the fund; and

(3) the estimated total cost of investigation and remedial action at any site eligible for funding under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or Subchapters F or I and not currently under contract.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 21, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, § 4, eff. Aug. 26, 1991.

¹ Section 361.181 et seq. and section 361.271 et seq.

Historical and Statutory Notes

Section 13 of the 1991 amendatory act provides:

"This Act takes effect immediately except that the fees changed or added by this Act shall not be due prior to September 1, 1991."

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1987, 70th Leg., ch. 279, §§ 15, 17.

Acts 1989, 71st Leg., ch. 703, § 4.

Acts 1989, 71st Leg., ch. 1144, § 2.

Vernon's Ann.Civ.St. art. 4477-7, §§ 11a(a), (c), (d); 12(d).

§ 361.134. Industrial Solid Waste and Hazardous Waste Generation Fee

(a) The annual generation fee prescribed by this section is imposed on each generator who generates Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission shall:

(1) require each generator of industrial solid waste or hazardous waste to register its activities; and

(2) collect the annual generation fee imposed under this section.

(c) The commission by rule shall adopt a generation fee schedule for use in determining the amount of fees to be charged. The annual generation fee may not be less than \$50 or more than \$25,000, except that the fee for generation of nonhazardous waste shall not be more than \$1,000.

(d) The commission by rule may exempt generators of small quantities of Class I industrial solid waste or hazardous waste from the payment of a generation fee under this section.

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(e) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(f) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations, Part 261, Subpart C, relating to characteristics of hazardous waste, and are rendered nonhazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under this chapter are exempt from the assessment of hazardous waste generation fees. By rule, the commission may authorize additional exemptions if consistent with state waste management policy. An exemption from fee assessment does not limit a generator's obligation to report waste generation or waste management activity under any applicable regulation of the commission.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, § 4, eff. Aug. 26, 1991.

Historical and Statutory Notes

Section 13 of the 1991 amendatory act provides:

"This Act takes effect immediately except that the fees changed or added by this Act shall not be due prior to September 1, 1991."

Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1987, 70th Leg., ch. 279, § 17.

Vernon's Ann.Civ.St. art. 4477-7, § 12(b).

Prior Laws:

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

§ 361.135. Industrial Solid Waste and Hazardous Waste Facility Fee

(a) The annual facility fee prescribed by this section is imposed on each person who holds one or more permits for the management of Class I industrial solid waste or hazardous waste or is operating a waste management unit subject to the requirement for permit authorization to process, store, or dispose of Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission by rule shall adopt a facility fee schedule for determining the amount of each annual fee to be charged.

(c) The annual facility fee may not be less than \$250. The maximum fee for a facility may not exceed \$25,000. The annual fee to be charged each Class I industrial solid waste or hazardous waste facility must be that set by the fee schedule adopted by the commission.

(d) The commission shall collect the facility fee imposed under this section.

(e) During a year in which a facility subject to interim status hazardous waste management requirements receives a final permit, the facility fee under this section may be imposed only on one of those classifications.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, § 4, eff. Aug. 26, 1991.

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Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1987, 70th Leg., ch. 279, § 17.
Vernon's Ann.Civ.St. art. 4477-7, § 12(c).

§ 361.136. Hazardous Waste Management Fee

(a) Except as provided by Subsections (e) through (i), a fee shall be imposed on the owner or operator of a waste storage, processing, or disposal facility for hazardous waste that is managed on site. This fee is in addition to any other fee that may be imposed under this chapter.

(b) The commission by rule shall establish fee rates for both commercial and noncommercial storage, processing, and disposal of hazardous waste, as well as the manner of collection, and shall revise the fee amounts as necessary.

(c) The hazardous waste management fee shall be based on the total weight or volume of a hazardous waste other than wastes that are disposed of in an underground injection well. The fee for those wastes shall be based on the dry weight of the waste.

(d) The hazardous waste management fee for wastes generated in this state may not exceed \$20 per ton for wastes that are landfilled. The commission by rule shall establish the amount of the fee for all other waste management methods at a lesser amount and shall base the amount on the factors specified in Section 361.139.

(e) A fee, which must be the same for wastes generated both in state and out of state and consistent with fees assessed for the management of other hazardous wastes, shall be established by the commission for the storage, processing, incineration, and disposal of hazardous waste fuels that the commission by rule shall define considering:

- (1) Btu content;
- (2) metals content;
- (3) chlorinated hydrocarbon content; and
- (4) the degree to which the waste fuel is used for energy recovery.

(f) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing, or disposal facility, for hazardous wastes that are generated in this state and received from an affiliate or wholly-owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this subsection, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(g) A fee may not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes for fewer than 90 days.

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(h) A fee may not be imposed under this section on the operation of a facility permitted under Chapter 26, Water Code, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface water of the state.

(i) The storage, processing, or disposal of hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(j) The owner or operator of a waste storage, processing, or disposal facility receiving hazardous waste from out-of-state generators shall be assessed a fee amount required on wastes generated in state plus an additional increment that the commission by rule shall establish. In establishing an incremental fee for out-of-state wastes, the commission shall consider:

(1) factors specified by Section 361.139;

(2) added costs to the state of regulating the interstate transport and subsequent management and disposal of imported hazardous wastes and its associated risks;

(3) similar fees that may be imposed in a generator's state of origin for the storage, processing, or disposal of hazardous waste; and

(4) contributions in both fees and taxes paid by generators in this state to the support of the state's hazardous waste regulatory programs.

(k) A fee for hazardous wastes that are legitimately reclaimed, reused, or recycled at a waste storage, processing, or disposal facility must be the same for wastes generated in state and out of state.

(l) Fees collected under this section shall be credited as follows:

(1) 25 percent of the commercial hazardous waste fee collected from each commercial waste storage, processing, or disposal facility shall be credited to the hazardous and solid waste fees fund to be distributed to the county in which the facility is located to assist that county in defraying the costs associated with commercial hazardous waste management facilities; and

(2) of the remaining amount of the commercial hazardous waste fee and of the total amount of the noncommercial hazardous waste fee collected from each waste storage, processing, or disposal facility:

(A) 50 percent of each amount shall be credited to the hazardous and solid waste remediation fee fund; and

(B) 50 percent of each amount shall be credited to the hazardous and solid waste fees fund.

(m) Funds due an affected county under Subsection (l)(1) shall be paid by the commission not later than the 60th day after the receipt and verification of the payments from commercial facilities in the county.

(n) The commission by rule shall provide:

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- (1) for methods of computing the dry weight of hazardous waste; and
- (2) for a method to determine or estimate the dry weight of small volumes of hazardous waste delivered to hazardous waste disposal facilities for which the costs of a dry weight analysis are disproportionate to the costs of disposal.

(o) A generator of hazardous waste shall provide to the operator of a land disposal facility certification of the computation of the dry weight of a hazardous waste to be disposed.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 24, eff. Sept. 6, 1990. Renumbered from § 361.138 and amended by Acts 1991, 72nd Leg., ch. 710, § 6, eff. Aug. 26, 1991.

Historical and Statutory Notes

Section 13 of the 1991 amendatory act provides:

"This Act takes effect immediately except that the fees changed or added by this Act shall not be due prior to September 1, 1991."

A former § 361.136, relating to a hazardous waste disposal fee, was repealed by acts 1991, 72nd Leg., ch. 710, § 5, eff. Aug. 26, 1991, and was derived from:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1987, 70th Leg., ch. 279, § 17.

Acts 1989, 71st Leg., ch. 703, § 1.

Vernon's Ann.Civ.St. art. 4477-7, § 12(d).

Acts 1989, 71st Leg., ch. 678, § 1.

Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 22.

Derivation:

Acts 1989, 71st Leg., ch. 1144, § 4.

Vernon's Ann.Civ.St. art. 4477-7, § 12(e).

V.T.C.A. Health & Safety Code, § 361.138.

Law Review Commentaries

Interstate waste: A key issue in resolving the national hazardous waste capacity crisis. B.J.

Wynne, III and Terri Hamby, 32 S.Tex.L.Rev. 601 (1991).

§ 361.137. Permit Application Fee

(a) A permit application fee is imposed on each applicant for an industrial solid waste or hazardous waste permit.

(b) The commission by rule shall establish the fee for permit applications at an amount that is reasonable to recover the demonstrable costs of processing an application and developing a draft permit, but that is not less than \$2,000 nor more than \$50,000.

(c) The commission may also establish a fee rate for approval of applications or petitions other than new permits, including but not limited to minor amendments, modifications, and closure plans, which fee may be less than \$2,000.

(d) Application fees collected under this section shall be deposited to the credit of the hazardous and solid waste fees fund.

Added by Acts 1991, 72nd Leg., ch. 710, § 9, eff. Aug. 26, 1991.

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Historical and Statutory Notes

Section 13 of the 1991 Act provides: Another § 361.137, relating to interest and penalties, was renumbered as § 361.140 by Acts 1991, 72nd Leg., ch. 710, § 8.

"This Act takes effect immediately except that the fees changed or added by this Act shall not be due prior to September 1, 1991."

Library References

Health and Environment §§ 25.5(5), (5.5), (9). C.J.S. Health and Environment §§ 44, 61 to 153.
WESTLAW Topic No. 199.

§ 361.138. Fee on the Sale of Batteries

(a) In this section, "lead-acid battery" means any battery with a capacity of six or more volts which contains lead and sulfuric acid.

(b) A wholesale or retail battery dealer who sells or offers to sell lead-acid batteries not for resale shall collect at the time and place of sale a fee for each lead-acid battery sold, according to the following schedule:

- (1) for a lead-acid battery with a capacity of less than 12 volts, a fee of \$2;
- (2) for a lead-acid battery with a capacity of 12 or more volts, a fee of \$3.

(c) A dealer required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (d), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(d) A person required to collect a fee under this section who collects less than \$50 for a calendar month or less than \$150 for a calendar quarter is not required to file a monthly report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day following the end of the calendar quarter.

(e) An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be available for inspection by the comptroller at all reasonable times.

(f) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(g) A person who does not file a report as provided by this section or who possesses a fee collected or payable under this section and who does not remit the fee to the comptroller at the time and in the manner required by this section and the rules of the comptroller shall pay a penalty of five percent of

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the amount of the fee due and payable. If the person does not file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(h) Except as provided in this section, the provisions of Chapters 101 and 111-113, Tax Code, apply to the administration, payment, collection and enforcement of fees under this section in the same manner that these provisions apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(i) A dealer required to collect a fee under this section may retain 2½ cents from each fee the dealer collects. A dealer shall account for amounts retained under this subsection in the manner prescribed by the comptroller.

(j) The comptroller may deduct a percentage of the fees collected under this section, not to exceed four percent of receipts, to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of the fees, penalties, and interest collected by the comptroller under this section shall be deposited to the hazardous and solid waste remediation fee fund.

Added by Acts 1991, 72nd Leg., ch. 710, § 11, eff. Aug. 26, 1991.

Historical and Statutory Notes

Another § 136.138, relating to commercial hazardous waste fees, was renumbered as § 361.136 by Acts 1991, 72nd Leg., ch. 710, § 6.

§ 361.139. Factors to be Considered in Setting Fees

(a) To promote the public policy of preferred waste management methods under Section 361.023 and to provide for an equitable fee rate structure, the commission shall consider the following in establishing the fees authorized under this subchapter:

(1) the variation in risks to the public associated with different waste management methods, including storage, specifically:

(A) promoting the establishment and maintenance of industrial solid waste and hazardous waste reclamation, reuse, and recycling facilities;

(B) promoting the public policy of preferred waste management methods for waste streams that are amenable to multiple waste management methods; and

(C) considering whether the waste is ultimately disposed of in the state;

(2) the funding needed to adequately and equitably support the regulation of industrial solid waste and hazardous waste generation, storage, processing, and disposal activities and the remediation of contaminated disposal sites, considering:

(A) the nature and extent of regulated activities and the variation in the cost of regulating different types of facilities;

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(B) the cost to the state of operating an effective program for the regulation of industrial solid waste and hazardous waste which protects human health and the environment and is consistent with state and federal authority;

(C) the higher costs of regulation and oversight that may be required for commercial hazardous waste management facilities;

(D) the sources and causes of contamination at sites in need of remediation; and

(E) the benefits and beneficiaries of the regulatory programs and activities supported through fees assessed under this subchapter;

(3) promoting the efficient and effective use of existing industrial solid waste and hazardous waste storage, processing, and disposal facilities within the state;

(4) whether a volume of waste received by a facility has been or will be assessed a hazardous waste fee at other facilities under Section 361.136; and

(5) the prevailing rates of similar fees for hazardous waste activities charged in other states to which wastes from this state may be exported or from which wastes may be imported for storage, processing, or disposal.

(b) In addition to the factors prescribed in Subsection (a), the commission, in establishing fees for the management of hazardous waste under Section 361.136, shall also consider:

(1) the amount of state matching funds necessary for remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act; and

(2) the costs of state-funded remedial actions under Subchapter F.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 24, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 710, § 7, eff. Aug. 26, 1991.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 1144, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 12(f).

§ 361.140. Interest and Penalties

(a) Interest at an annual rate of 15 percent of the amount of a fee due under Sections 361.134 through 361.137 and unpaid accrues from the date on which the fee is due.

(b) A person is subject to a civil penalty of up to \$100 for each day the violation continues for failure to timely submit a properly completed report as required by commission rule under Section 361.035.

(c) Interest collected under this section for late payment of a fee shall be deposited in the state treasury to the credit of the respective fund to which the late fee is credited.

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(d) Any penalty collected under this section for late filing of reports shall be deposited in the state treasury to the credit of the hazardous and solid waste remediation fee fund.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 23, eff. Sept. 6, 1990. Renumbered from § 361.137 and amended by Acts 1991, 72nd Leg., ch. 710, § 8, eff. Aug. 26, 1991.

Historical and Statutory Notes

The 1990 amendment, to conform to Acts 1989, 71st Leg., ch. 1144, § 5, in subsec. (a) substituted "361.136, or 361.138" for "or 361.136"; in subsec. (c) substituted "a fee" for "generation or facility fees" and "respective fund to which the late fee is credited" for "hazardous waste generation and facility fees"; and in subsec. (d) substituted "Any penalty" for "Interest and penalties", and deleted "payment of disposal fees and late" following "late".

The 1991 amendment, in subsec. (a), substituted "Sections 361.134 through 361.137" for

"Section 361.134, 361.135, 361.136, or 361.138"; in subsec. (b) inserted "up to" and "properly completed"; and in subsec. (d) substituted "and solid waste remediation fee fund" for "waste disposal fee fund."

Derivation:

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

Acts 1987, 70th Leg., ch. 279, § 20.

Acts 1989, 71st Leg., ch. 1144, § 5.

Vernon's Ann.Civ.St. art. 4477-7, § 14a.

V.T.C.A. Health and Safety Code, § 361.137.

[Sections 361.141 to 361.150 reserved for expansion]

SUBCHAPTER E. POWERS AND DUTIES OF LOCAL GOVERNMENTS

§ 361.151. Relationship of County Authority to State Authority

(a) Each county has the solid waste management powers prescribed under this subchapter.

(b) The exercise of the licensing authority and other powers granted to a county by this chapter does not preclude the department or the commission from exercising the powers vested in the department or the commission under other provisions of this chapter, including the provisions authorizing the department and the commission to issue a permit to construct, operate, and maintain a facility to process, store, or dispose of solid waste.

(c) The department and the commission, each acting within its separate scope of jurisdiction, by specific action or directive, may supersede any authority granted to or exercised by a county under this chapter.

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

Historical and Statutory Notes

Prior Laws:

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

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

Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.

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

Acts 1983, 68th Leg., p. 2447, ch. 435, § 3.

Acts 1985, 69th Leg., ch. 795, § 1.164.

Vernon's Ann.Civ.St. art. 4477-7, § 5(a).

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Library References

Health and Environment ~~§~~25.5(5), (5.5).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 44, 61 to
94, 104 to 153.

§ 361.152. Limitation on County Powers Concerning Industrial Solid Waste

The powers specified by Sections 361.154–361.162 and Sections 364.011 and 364.012 (County Solid Waste Control Act) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Section 361.090 applies.

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

Revisor's Note

The source law refers to Article 4477–8, Vernon's Texas Civil Statutes. That statute is revised as Chapter 364, and the revised law reflects this change.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to
8, 10.

Acts 1983, 68th Leg., p. 2447, ch. 435, § 3.
Acts 1985, 69th Leg., ch. 795, § 1.164.
Vernon's Ann.Civ.St. art. 4477–7, § 5(a).

§ 361.153. County Solid Waste Plans and Programs; Fees

(a) A county may appropriate and spend money from its general revenues to manage solid waste and to administer a solid waste program and may charge reasonable fees for those services.

(b) As sufficient funds are made available by the department, a county shall develop county solid waste plans and coordinate those plans with the plans of:

(1) local governments, regional planning agencies, other governmental entities, and the department, as prescribed by Subchapter D, Chapter 363;¹ and

(2) the commission.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 25, eff. Sept. 6, 1990.

¹ Section 363.061 et seq.

Historical and Statutory Notes

Section 7 of Acts 1989, 71st Leg., ch. 1143 provides:

"(a) This Act takes effect September 1, 1989, and applies only to fees charged by the Texas Department of Health:

"(1) concerning municipal solid waste that is disposed of at a municipal solid waste management facility on or after January 1, 1990; and

"(2) for the registration of a transporter of solid waste who registers with the department on or after January 1, 1990.

"(b) Not later than January 1, 1990, the Texas Department of Health shall adopt rules necessary to carry out this Act."

Acts 1989, 71st Leg., 1st C.S., ch. 24, § 1.04 authorized the Texas Department of Health to

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establish three additional positions (one bureau chief and two directors) exempt from the position classification plan for state employees (Vernon's Ann.Civ.St. art. 6252-11) to perform the increased responsibilities provided by the amendments enacted under Acts 1989, 71st Leg., ch. 1143.

Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 1.164.
Acts 1989, 71st Leg., ch. 1143, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 5(b), (c).

Prior Laws:

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

Notes of Decisions

Facilities 1

1. Facilities

A profit or non-profit Texas corporation may perform solid waste disposal services under

Texas laws. Corporations chartered under art. 1434a cannot amend to include waste disposal purposes. A county, incorporated city or other political subdivision, or combination thereof, may legally contract with such corporations for the services described in this article. Op. Atty.Gen. 1970, No. M-693.

§ 361.154. County Licensing Authority

(a) Except as provided by Sections 361.151 and 361.152, a county may require and issue licenses authorizing and governing the operation and maintenance of facilities used to process, store, or dispose of solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(b) If a county exercises licensing authority, it shall adopt and enforce rules for the management of solid waste. The rules must be:

(1) compatible with and not less stringent than those of the board of health or the commission, as appropriate; and

(2) approved by the department or the commission, as appropriate.

(c) Sections 361.155-361.161 apply if a county exercises licensing authority under this section.

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

Revisor's Note

(1) The source law refers to "incorporated cities or towns." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 1.164.
Vernon's Ann.Civ.St. art. 4477-7, § 5(d).

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Notes of Decisions

Location of facilities 1
Regulatory authority 2

1. Location of facilities

Rule I-2 promulgated by the Texas Department of Health Resources under this article and art. 4477-8, does not affect the power of counties to license landfills within the extraterritorial jurisdiction of incorporated cities and towns; the department has authority to promulgate Rule I-7, which requires a hearing for renewal of a county license. Op.Atty.Gen. 1977, No. H-931.

2. Regulatory authority

The regulatory authority of a county over solid waste disposal activities within the extraterritorial jurisdiction of an incorporated city or town is limited to the power to require disposal sites to be licensed; to issue, extend, and renew such licenses; and to provide terms and conditions upon which such licenses are issued. In addition, within this area a county may designate and acquire disposal sites and may enforce the requirements of this article, and the rule and regulations of the Department of Health and the Texas Water Quality Board. Op.Atty.Gen. 1975, No. H-653.

A county exercising licensing authority under § 5 of this article, may select and license a disposal site to be operated by the county. While no license for a municipal solid waste disposal site may be issued without the prior approval of the Department of Health, once a license is obtained, a permit from the Department is not necessary. Approval should not be given of any site which will not comply with statutory requirements or departmental rules and regulations. Any municipal solid waste disposal site licensed by a county must operate in compliance with rules and regulations of the Department. Id.

With respect to counties exercising licensing authority under § 5 of this article, the Department of Health may not require the owner or operator of a proposed disposal site to obtain a license from the appropriate county rather than a permit from the Department; application for a license may be made a prerequisite to a permit. Id.

Procedures required of the Department of Health by this article are not required of counties; the Department of Health may require reasonable procedures of counties in addition to those contained in this article which are expressly applicable to counties. Id.

§ 361.155. County Notification of License Application to State Agencies

The county shall mail a copy of each license application with pertinent supporting data to the department, the commission, and the Texas Air Control Board.¹ Each agency has at least 60 days to submit comments and recommendations on the license application before the county may act on the application unless that privilege is waived by the affected agency.

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

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

Historical and Statutory Notes

Prior Laws:

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

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

Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.

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

Acts 1985, 69th Leg., ch. 795, § 1.164.

Vernon's Ann.Civ.St. art. 4477-7, § 5(d).

§ 361.156. Separate License for Each Facility

(a) A county shall issue a separate license for each solid waste facility.

(b) A license under this subchapter may be issued only to the person in whose name the application is made and only for the facility described in the license.

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(c) A license may not be transferred without prior notice to and approval by the county that issued it.

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

Historical and Statutory Notes

Prior Laws:

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

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

Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.

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

Acts 1985, 69th Leg., ch. 795, § 1.164.

Vernon's Ann.Civ.St. art. 4477-7, § 5(d).

§ 361.157. Contents of License

A license for a solid waste facility issued by a county must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the license is issued, including the duration of the license.

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

Historical and Statutory Notes

Prior Laws:

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

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

Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.

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

Acts 1985, 69th Leg., ch. 795, § 1.164.

Vernon's Ann.Civ.St. art. 4477-7, § 5(d).

§ 361.158. License Fee

(a) A county may charge a license fee not to exceed \$100, as set by the commissioners court of the county.

(b) The fees shall be deposited to the credit of the county's general fund.

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

Historical and Statutory Notes

Prior Laws:

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

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

Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.

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

Acts 1985, 69th Leg., ch. 795, § 1.164.

Vernon's Ann.Civ.St. art. 4477-7, § 5(d).

Notes of Decisions

In general 1

er is fact question which cannot be reached in opinion process. Op.Att'y.Gen. 1986, No. JM-473.

1. In general

Whether fees promulgated in administrative code for solid waste disposal permits are prop-

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§ 361.159. License Issuance; Amendment, Extension, and Renewal

(a) A county may amend, extend, or renew a license it issues in accordance with county rules.

(b) The procedures prescribed by Section 361.155 apply to an application to amend, extend, or renew a license.

(c) A license for the use of a facility to process, store, or dispose of solid waste may not be issued, amended, renewed, or extended without the prior approval of the department or the commission, as appropriate.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 1.164.
Vernon's Ann.Civ.St. art. 4477-7, § 5(d).

Notes of Decisions

Procedures 1

1. Procedures

This article does not require counties to hold a hearing, prior to the issuance, extension, or

renewal of a license, and we are aware of no regulation or order of the Department of Health which would require such hearings. Op.Atty.Gen. 1975, No. H-653.

§ 361.160. License Amendment and Revocation

(a) A county may, for good cause, after hearing with notice to the license holder and to the state agencies specified by Section 361.155, revoke or amend a license it issues for reasons concerning:

(1) public health;

(2) air or water pollution;

(3) land use; or

(4) a violation of this chapter or of other applicable laws or rules controlling the processing, storage, or disposal of solid waste.

(b) For similar reasons, the department and the commission, each acting within its separate scope of jurisdiction, may for good cause amend or revoke a license issued by a county, after hearing with notice to:

(1) the license holder;

(2) the county that issued the license; and

(3) the other state agencies specified by Section 361.155.

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

Historical and Statutory Notes

Prior Laws:

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

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

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Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to
8, 10.

Acts 1985, 69th Leg., ch. 795, § 1.164.
Vernon's Ann.Civ.St. art. 4477-7, § 5(d).

Notes of Decisions

Discrimination 1

1. Discrimination

If State Department of Health either discriminated on its own or endorsed or ratified racial discriminatory acts of other defendants in selection of site for solid waste facility, plaintiffs who brought civil rights action challenging the site selection would be entitled to relief on basis that there had been deprivation of rights under color of state law. *Bean v. Southwestern Waste Management Corp.* (D.C.1979) 482 F.Supp. 673.

Federal district court would not abstain from deciding civil rights action based on alleged racial discrimination in selection of site for solid waste facility, despite contention that plaintiffs under this article could petition State Department of Health for rehearing on granting of permit, where this article permitted revocation of permit on rehearing only for reasons pertaining to public health, air or water pollution, land use, or violation of this article or other applicable laws or regulations controlling disposal of solid waste and witnesses indicated that Department would not examine allegations of race discrimination in site selection. *Id.*

§ 361.161. Permit From Department or Commission Not Required

If a county issues, amends, renews, or extends a license in accordance with Sections 361.154-361.160, the owner or operator of the facility is not required to obtain a permit from the department or the commission for the same facility.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 825, ch. 308, § 1.
Acts 1977, 65th Leg., p. 2342, ch. 870, §§ 6, 7.

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to
8, 10.
Acts 1985, 69th Leg., ch. 795, § 1.164.
Vernon's Ann.Civ.St. art. 4477-7, § 5(d).

Notes of Decisions

In general 1

permit from the Department. Op.Atty.Gen.
1975, No. H-653.

1. In general

A county operating a disposal site pursuant to a license may not be required to obtain a

§ 361.162. Designation of Areas Suitable for Facilities

(a) Subject to the limitation under Sections 361.151 and 361.152, a county may designate land areas not in the territorial limits or extraterritorial jurisdiction of a municipality as suitable for use as solid waste facilities.

(b) The county shall base a designation on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and other pertinent factors.

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

Revisor's Note

The source law refers to "incorporated cities or towns." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

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

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

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

Vernon's Ann.Civ.St. art. 4477-7, § 5(e).

§ 361.163. Cooperative Agreements With Local Governments

A county may enter into cooperative agreements with local governments and other governmental entities to jointly operate solid waste management activities and to charge reasonable fees for the services.

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Vernon's Ann.Civ.St. art. 4477-7, § 5(h).

§ 361.164. Enforcement

A county may enforce this chapter and the rules adopted by the board of health and the commission concerning the management of solid waste.

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

Historical and Statutory Notes

Prior Laws:

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

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

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

Acts 1985, 69th Leg., ch. 795, § 1.164.

Vernon's Ann.Civ.St. art. 4477-7, § 5(f).

§ 361.165. Political Subdivisions With Jurisdiction in Two or More Counties

(a) This section applies to a political subdivision of the state that:

(1) has jurisdiction of territory in more than one county; and

(2) has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities in its jurisdiction.

(b) The governing body of the political subdivision may, by resolution, assume for the political subdivision the exclusive authority to exercise, in the area subject to its jurisdiction, the powers granted by this chapter to a county, to the exclusion of the exercise of the same powers by the counties otherwise having jurisdiction over the area.

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(c) In the exercise of those powers, the political subdivision is subject to the same duties, limitations, and restrictions applicable to a county under this chapter.

(d) A political subdivision that assumes the authority granted under this section:

(1) serves as the coordinator of all solid waste management practices and activities for municipalities, counties, and other governmental entities in its jurisdiction that have solid waste management regulatory powers or engage in solid waste management practices or activities; and

(2) shall exercise the authority as long as the resolution of the political subdivision is effective.

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

Revisor's Note

The source law refers to "cities." The revised law substitutes "municipalities" for the reason stated in Revisor's Note (3) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

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

Vernon's Ann.Civ.St. art. 4477-7, § 6.

Cross References

Scrap tires storage,

Exemption from solid waste disposal fees, see § 361.013.

Exemption from storage restrictions, see § 361.112.

Upper Sabine Valley Solid Waste Management District, exercise of powers, see Vernon's Ann.Civ. St. art. 4477-7k.

§ 361.166. Municipal Restrictions

A municipality may not abolish or restrict the use or operation of a solid waste facility in its limits or extraterritorial jurisdiction if the solid waste facility:

(1) was in existence when the municipality was incorporated or was in existence when the municipality annexed the area in which it is located; and

(2) is operated in substantial compliance with applicable state and county regulations.

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

Revisor's Note

The source law refers to "incorporated city or town." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

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Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Vernon's Ann.Civ.St. art. 4477-7, § 6a(a).

§ 361.167. Operation of Facility by Political Subdivision

A municipality or other political subdivision operating a solid waste facility may not be prevented from operating the solid waste facility on the ground that the facility is located in the limits or extraterritorial jurisdiction of another municipality.

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

Revisor's Note

The source law refers to "an incorporated city or town." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Vernon's Ann.Civ.St. art. 4477-7, § 6(b).

[Sections 361.168 to 361.180 reserved for expansion]

**SUBCHAPTER F. REGISTRY AND CLEANUP OF
CERTAIN HAZARDOUS WASTE FACILITIES**

Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29 amended Subchapter F, formerly consisting of §§ 361.181 to 361.203, to conform to Acts 1989, 71st Leg., ch. 703, § 5.

Cross References

Appeal of administrative order, see § 361.322.

§ 361.181. State Registry: Annual Publication

(a) The commission shall annually publish an updated state registry identifying, to the extent feasible, each facility that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

(b) The registry shall identify the relative priority for action at each listed facility. The relative priority for action at facilities listed on the registry shall be periodically reviewed and revised by the commission as necessary to accurately reflect the need for action at the facilities.

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(c) In this subchapter, "facility" means any building, structure, installation, equipment, pipe, or pipeline (including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft), or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located. The term does not include any consumer product in consumer use or any vessel.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Section 8 of Acts 1989, 71st Leg., ch. 703, provides:

"Except as otherwise provided in this section, all facilities that were listed on the state registry prior to September 1, 1989, remain on the registry and are subject to all provisions of the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by this legislation.

"(1) This legislation shall have no effect on facilities that are subject to an administrative order issued pursuant to Subsection (g), Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), requiring remedial action if the order was issued prior to September 1, 1989.

"(2) With respect to facilities for which an approved work plan has been developed for a remedial investigation/feasibility study or other similar approved study, this legislation shall have no effect on those activities covered by the approved plan. Activities that are not covered within the approved work plan by September 1, 1989, shall take place in accordance with the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by this legislation.

"(A) Where activities at such facilities are completed in compliance with the approved work plan, participating responsible parties shall not be assessed costs for commission oversight of the remedial investigation/feasibility study or other similar approved study. Following completion of the approved work plan, all other activities regarding this facility shall take place in accordance with the Solid Waste Disposal Act (Article 4477-7, Vernon's

Texas Civil Statutes), as amended by this legislation.

"(B) Where activities are not conducted or completed in compliance with the approved work plan, the commission is authorized to conduct or complete the remedial investigation/feasibility study or similar study and seek recovery of the costs of conducting or completing the study, as well as any applicable oversight costs, from the potentially responsible parties. Following completion by the commission of the study, all other activities shall take place in accordance with the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by this legislation.

"(C) With respect to those facilities previously listed on the state registry for which a remedial investigation/feasibility study or other similar study has not been approved as of September 1, 1989, the executive director shall notify all potentially responsible parties that they have 90 days from receipt of the notice within which to make a good faith offer under Subdivision (7) of Subsection (c) of Section 13 of the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by this Act. All other activities regarding the facility shall take place in accordance with that Act as amended by this legislation."

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.

Vernon's Ann.Civ.St. art. 4477-7, § 13(a).

Law Review Commentaries

Commanding respect: Criminal sanctions for environmental crimes. Eva M. Fromm, 21 St. Mary's L.J. 821 (1990).

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Library References

Health and Environment §25.5(5.5).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 91, 92,
106, 109, 129 to 131.

§ 361.182. Investigations

(a) The executive director may conduct investigations of facilities that are listed on the state registry, or that the executive director has reason to believe should be included on the state registry, in accordance with Sections 361.032, 361.033, and 361.037.

(b) If there is a reasonable basis to believe there may be a release or threatened release of a hazardous substance at a facility, the executive director may submit requests for information and requests for the production of documents to any person who has or may have information or documents relevant to:

(1) the identification, nature, or quantity of materials that have been generated, treated, stored, or disposed of at a facility or transported to a facility;

(2) the identification of soils, groundwater, or surface water at a facility that have been or may be affected by an actual or threatened release of a hazardous substance;

(3) the nature or extent of a release or threatened release of a hazardous substance at or from a facility; or

(4) the ability of a person to pay for or to perform a remedial action.

(c) If the requested information or documents are not produced in a timely manner, the commission may issue an order directing compliance with the requests for information or production of documents. Information or documents requested under Subsection (b) or this subsection are public records, except that the commission shall consider the copied records as confidential if a showing satisfactory to the commission is made by the owner of the records that the records would divulge trade secrets if made public. This subsection does not require the commission to consider the composition or characteristics of hazardous substances being processed, stored, disposed of, or otherwise handled to be held confidential.

(d) The commission shall adopt rules regarding the provision of notice and an opportunity for a hearing before the commission on whether the requested information or documents should be produced.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(b)(1).

§ 361.183**SANITATION AND ENVIRONMENTAL QUALITY
Title 5****§ 361.183. Registry Listing Procedure: Determination of Eligibility**

(a) Before the listing of a facility on the state registry, the executive director shall determine whether the potential endangerment to public health and safety or the environment at the facility can be resolved by the present owner or operator under the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901) or by some or all of the potentially responsible parties identified in Subchapter I,¹ under an agreed administrative order issued by the commission.

(b) If the potential endangerment to public health and safety or the environment can be resolved in such a manner, the facility may not be listed on the state registry. Notice of the approach selected to resolve the apparent endangerment to public health and safety or the environment and the fact that this action is being taken in lieu of listing the facility on the state registry shall be published in the Texas Register.

(c) If after reasonable efforts the executive director determines that the potential endangerment to public health and safety or the environment cannot be resolved by either of the approaches under Subsection (a), the executive director shall evaluate the facility to determine whether the site exceeds the commission's minimum criteria for listing on the state registry. The commission by rule shall adopt the minimum criteria. The executive director shall also evaluate the facility to determine whether it is eligible for listing on the federal National Priorities List.

(d) The commission shall proceed under this subchapter only if, based on information available to the executive director, the facility is eligible for listing on the state registry but not eligible for the federal National Priorities List.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

¹ Section 361.271 et seq.

Historical and Statutory Notes**Prior Laws:**

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(b)(2).

§ 361.184. Registry Listing Procedure: Notices and Hearing

(a) If the executive director determines that a facility is eligible for listing on the state registry, the commission shall publish in the Texas Register and in a newspaper of general circulation in the county in which the facility is located a notice of intent to list the facility on the state registry. The notice shall at least specify the name and location of the facility, the general nature of the potential endangerment to public health and safety or the environment as determined by information available to the executive director at that time, and the duties and restrictions imposed by Subsection (c). The notice also shall provide that interested parties may do either or both of the following:

(1) submit written comments to the commission relative to the proposed listing of the facility; or

(2) request a public meeting to discuss the proposed listing by submitting a request not later than the 30th day after the date on which the notice is issued.

(b) If the facility is determined to be eligible for listing on the state registry, the executive director shall make all reasonable efforts to identify all potentially responsible parties for remediation of the facility. Concurrent with the publication of general notice under Subsection (a), the executive director shall provide to each identified potentially responsible party direct, written notification of the proposed listing of the facility on the state registry and of the procedures for requesting a public meeting to discuss the listing and the information included in the general notice as required by Subsection (a). Written notifications under this subsection shall be by certified mail, return receipt requested, to each named responsible party at the party's last known address.

(c) If a public meeting is requested regarding the proposed listing of a facility on the state registry, the commission shall publish general notice of the date, time, and location of the public meeting in the Texas Register and in the same newspaper in which the notice of the opportunity to request the public meeting was published. The public meeting notice shall be provided not later than the 31st day before the date of the meeting. Notice of the meeting also shall be provided by certified mail, return receipt requested, to each identified potentially responsible party at the party's last known address.

(d) Nonreceipt of any notice mailed to a potentially responsible party under Subsection (b) or this subsection does not affect the responsibilities, duties, or liabilities imposed on the party. Contemporaneously with issuing the notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For the purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for inspection and copying during regular business hours.

(e) A public meeting is legislative in nature and not a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The meeting shall be held for the purpose of obtaining additional information regarding the facility relative to the eligibility of the facility for listing on the state registry and the identification of potentially responsible parties.

(f) After the public meeting or after opportunity to request a public meeting has passed, the commission shall file or cause to be filed an affidavit or notice in the real property records of the county in which the facility is located identifying the facility as one proposed for listing on the state registry unless the executive director determines, based on information presented at the

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public meeting, that efforts to list the facility on the state registry should not be pursued.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes**Prior Laws:**

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(c), (d).

§ 361.185. Investigation/Feasibility Study

(a) After the public meeting or after opportunity to request a public meeting has passed, but before any listing of the facility on the state registry, the commission shall allow all identified potentially responsible parties the opportunity to fund or conduct, if appropriate, a remedial investigation/feasibility study, or a similar study as approved by the executive director, for the facility. Not later than the 90th day after notice under Section 361.184(a) is issued, the potentially responsible parties may make a good faith offer to conduct the study. If a good faith offer from all or some of the potentially responsible parties is received by the commission within that period, those making the offer have an additional 60 days within which to negotiate an agreed administrative order from the commission, which must include a scope of work. In the agreed administrative order the commission may not require the participating potentially responsible parties to agree to perform the remedial action or admit liability for the facility remediation.

(b) If no potentially responsible party makes a good faith offer to conduct the remedial investigation/feasibility study or similar study as approved by the executive director or if the participating potentially responsible parties fail to conduct or complete an approved study, the commission may conduct or complete the study using funds from the hazardous waste disposal fee fund.

(c) To encourage potentially responsible parties to perform the remedial investigation/feasibility study or other similar study as approved by the executive director, costs for commission oversight of the study may not be assessed against those parties who fund or perform the study. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility under this chapter or who subsequently enter into an agreed order relative to the remediation of the facility may be assessed up to the full costs for commission oversight of the study process. If all potentially responsible parties participate or agree to fund the remedial investigation/feasibility study or other similar study, all commission oversight costs shall be paid from the hazardous waste disposal fee fund.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

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Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(e)(1)
to (3).

§ 361.186. Facility Eligible for Listing: Activities and Change of Use

(a) If the executive director determines that a facility is eligible for listing on the state registry, a person may not perform at the facility any partial or total removal activities except as authorized by the executive director in appropriate circumstances after notice and opportunity for comment to all other potentially responsible parties. The commission may adopt rules determining what constitutes an appropriate circumstance to take removal action under this subsection. Authorization by the executive director to conduct a partial or total removal action does not constitute:

- (1) a final determination of the party's ultimate liability for remediation of the facility; or
- (2) a determination of divisibility.

(b) If the facility is determined to be eligible for listing on the state registry, the owner or operator of the facility must provide the executive director with written notice of any substantial change in use of the facility before the 60th day before the date on which the change in use is made. Notice of a proposed substantial change in use must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use. A substantial change in use shall be defined by rule and must include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) If, within 30 days after the date of the notice, the executive director determines that the proposed substantial change in use will interfere significantly with a proposed or ongoing remedial investigation/feasibility study or similar study approved by the executive director or expose the public health and safety or the environment to a significantly increased threat of harm, the executive director shall notify the owner or operator of the determination. After the determination is made and notification given, the owner or operator may not proceed with the proposed substantial change in use. The owner or operator may request a hearing before the commission on whether the determination should be modified or set aside by submitting a request not later than the 30th day after the receipt of the executive director's determination. If a hearing is requested, the commission shall initiate the hearing not later than the 45th day after the receipt of the request. The hearing shall be conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The executive

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director's determination becomes unappealable on the 31st day after issuance if a hearing is not requested.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes**Prior Laws:**

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

Acts 1985, 69th Leg., ch. 566, § 12

Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.

Vernon's Ann.Civ.St. art. 4477-7, § 13(e)(4), (5).

§ 361.187. Proposed Remedial Action

(a) Within a reasonable time after the completion of the remedial investigation/feasibility study or other similar study, if required, the executive director shall select a proposed remedial action. After the selection of a proposed remedial action, the commission shall hold a public meeting to discuss the proposed action.

(b) The commission shall publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located at least 45 days before the date of the public meeting. The notice shall provide information regarding the proposed remedial action and the date, time, and place of the meeting. The commission shall also mail the same information to each potentially responsible party by certified mail, return receipt requested, at the party's last known address at least 45 days before the public meeting. Contemporaneously with the issuance of notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for inspection and copying during regular business hours. Nonreceipt of any notice mailed to a potentially responsible party under this section does not affect the responsibilities, duties, or liabilities imposed on the party.

(c) The public meeting is legislative in nature and not a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The meeting shall be held for the purpose of obtaining additional information regarding the facility and the identification of additional potentially responsible parties. Those in attendance may comment on the proposed remedial action, and the executive director may revise the proposed remedial action in light of the presentations.

(d) After the public meeting on the proposed remedial action, the commission shall provide all identified potentially responsible parties an opportunity to fund or perform the proposed remedial action. Not later than the 60th day after the date of the public meeting, the potentially responsible parties may make a good faith offer to fund or perform the proposed remedial action. If a good faith offer is made by all or some of the potentially responsible parties

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within this period, those parties have an additional 60 days to negotiate an agreed administrative order from the commission, which shall include a scope of work. The commission may not require an admission of liability in the agreed administrative order.

(e) To encourage potentially responsible parties to perform the remedial action, costs for commission oversight of the remedial action may not be assessed against those parties who fund or perform the remedial action. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility may be assessed up to the full costs for commission oversight of the remedial action. If all potentially responsible parties conduct or fund the remedial action, all commission oversight costs shall be paid from the hazardous waste disposal fee fund. Participation in the remedial action does not relieve those who did not conduct or fund the remedial investigation/feasibility study or other similar study approved by the executive director from paying their portion of the oversight costs of that phase of the remediation.

(f) The executive director may authorize a potentially responsible party to conduct a partial remedial action at a portion of the facility if after notice and opportunity for comment to all other potentially responsible parties the executive director determines that the release or threatened release is divisible. In this subchapter, "divisible" means that the hazardous substance released or threatened to be released is capable of being managed separately under the remedial action plan. A determination of divisibility by the executive director does not have res judicata or collateral estoppel effect on a potentially responsible party's ultimate liability for remediation of the facility under Subchapter G or I.¹

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

¹ Section 361.221 et seq. or § 361.271 et seq.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(f)(1),
(2).

§ 361.188. Final Administrative Order

(a) After consideration of all good faith offers to perform a remedial action, the commission shall issue a final administrative order that must:

- (1) list the facility on the state registry, thus determining that the facility poses an imminent and substantial endangerment to public health and safety or the environment;
- (2) specify the selected remedial action;
- (3) list the parties determined to be responsible for remediating the facility;

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(4) make findings of fact describing actions voluntarily undertaken by responsible parties;

(5) order the responsible parties to remediate the facility and, if appropriate, reimburse the hazardous waste disposal fee fund for remedial investigation/feasibility study and remediation costs;

(6) establish a schedule for completion of the remedial action;

(7) state any determination of divisibility of responsible party liability; and

(8) give notice of the duties and restrictions imposed by Section 361.190.

(b) The provisions in Subchapters I, K, and L¹ relating to administrative orders apply to orders issued under this section.

(c) If a potentially responsible party is newly identified after a final administrative order under Subsection (a) has been issued by the commission, that party has 60 days to negotiate an amendment to the existing order. The commission is not prohibited from issuing a separate order for the newly identified potentially responsible party if the commission determines that the circumstances warrant a separate order. The responsible parties identified in the order issued under Subsection (a) shall be allowed to comment on the issuance of a separate order for the newly identified potentially responsible party.

(d) Within a reasonable period after a determination has been made, the commission shall file or cause to be filed in the real property records of the county in which the facility is located an affidavit or notice stating that the facility has been listed on or deleted from the state registry or is no longer proposed for listing on the state registry.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

¹ Section 361.271 et seq., § 361.321 et seq., and § 361.341 et seq.

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.

Vernon's Ann.Civ.St. art. 4477-7, § 13(g)(1).

Cross References

Cost recovery by state, see § 361.341.

§ 361.189. Deletions from Registry

(a) Any owner or operator or other named responsible party of a facility listed or to be listed on the state registry may request the commission to delete the facility from the state registry, modify the facility's priority within the state registry, or modify any information regarding the facility by submitting a written statement setting forth the grounds of the request in the form the commission may by rule require.

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(b) The commission by rule shall establish procedures, including public hearings, for review of requests submitted under this section.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(a),
(g)(1).

§ 361.190. Change in Use of Listed Facility

(a) After the listing of a facility on the state registry, a person may not substantially change the manner in which the facility is used without notifying the executive director and receiving written approval of the executive director for the change.

(b) A substantial change in use shall be defined by rule and shall include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) The notice must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use.

(d) The executive director shall approve or disapprove the proposed action within 60 days after the date of receipt of the notice of proposed change in use. The executive director may not approve the proposed change in use if the new use will significantly interfere with a proposed, ongoing, or completed remedial action program at a facility or expose the public health and safety or the environment to a significantly increased threat of harm.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1987, 70th Leg., ch. 279, § 19.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(g)(3).

§ 361.191. Immediate Removal

(a) If the commission, after investigation, finds that there exists a release or threatened release of a hazardous substance at a facility that is causing irreversible or irreparable harm to the public health and safety or the environment and that the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued

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to potentially responsible parties or until a judgment can be entered in an appeal of an administrative order, the commission may, with the funds available to the commission from the hazardous waste disposal fee fund, undertake immediate removal action at the facility to alleviate the harm.

(b) After the immediate danger of irreversible or irreparable harm has been alleviated, the commission shall proceed under this subchapter.

(c) Findings required under this section must be in writing and may be made ex parte by the commission subject to judicial review under the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) The reasonable expenses of any immediate removal action taken by the commission may be recoverable from the persons described in Subchapter G or I,¹ and the state may seek to recover the reasonable expenses in any court of appropriate jurisdiction.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

¹ Section 361.221 et seq. or § 361.271 et seq.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1987, 70th Leg., ch. 279, § 19.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(g)(2), (3).

§ 361.192. Remedial Action by Commission

(a) If a person ordered to eliminate an imminent and substantial endangerment to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the commission, the commission may implement the remedial action program for the facility.

(b) The reasonable expenses of implementing the remedial action program by the commission shall be paid by the persons to whom the order was issued and shall be recoverable under Section 361.197.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(g)(1).

§ 361.193. Goal of Remedial Action

(a) The goal of any remedial action is the elimination of the imminent and substantial endangerment to the public health and safety or the environment

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posed by a release or threatened release of a hazardous substance at a facility. The appropriate extent of the remedial action at any particular facility shall be determined by the commission's selection of the remedial alternative that the commission determines is the lowest cost alternative that is technologically feasible and reliable and that effectively mitigates and minimizes damage to and provides adequate protection of the public health and safety or the environment.

(b) In considering the appropriate remedial action program at a particular facility, the commission may approve a program that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criterion, or limitation, as required by state or local law, if the commission finds that:

(1) the remedial action selected is only part of a total remedial action that will attain that level or standard of control when completed;

(2) compliance with the requirement at that facility will result in greater risk to public health and safety or the environment than alternative options;

(3) compliance with the requirement is technically impracticable from an engineering perspective;

(4) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criterion, or limitation through use of another method or approach;

(5) with respect to a local standard, requirement, criterion, or limitation, the locality has not consistently applied or demonstrated the intention to consistently apply the standard, requirement, criterion, or limitation in similar circumstances of other remedial actions within the locality; or

(6) with respect to an action using solely state funds, selection of a remedial action that attains those levels or standards of control will not provide a balance between the need for protection of public health and safety or the environment at the facility and the availability of state funds to respond to other sites that present a threat to public health and safety or the environment, taking into consideration the relative immediacy of the threats.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.

Vernon's Ann.Civ.St. art. 4477-7, § 13(g)(4).

§ 361.194. Lien

(a) In addition to all other remedies available to the state under this chapter or other law, all remediation costs for which a person is liable to the

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state constitute a lien in favor of the state on the real property and the rights to the real property that are subject to or affected by a remedial action. This provision is cumulative of other remedies available to the state under this chapter.

(b) The lien imposed by this section arises and attaches to the real property subject to or affected by a remedial action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the costs is satisfied or becomes unenforceable through operation of law.

(c) An authorized representative of the commission shall execute the affidavit. The affidavit must show:

- (1) the names and addresses of the persons liable for the costs;
- (2) a description of the real property that is subject to or affected by the remediation action for the costs or claims; and
- (3) the amount of the costs and the balance due.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index the affidavit under the names of the persons liable for the costs.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a clean-up action or has knowledge that the state has incurred clean-up costs.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. The bond must:

- (1) describe the real property on which the lien is claimed;
- (2) refer to the lien claimed in a manner sufficient to identify it;

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- (3) be in an amount double the amount of the lien referred to;
 - (4) be payable to the commission;
 - (5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and
 - (6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property.
- (i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.
- (j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(g)(5).

§ 361.195. Payments from Hazardous Waste Disposal Fee Fund

- (a) Money for actions taken or to be taken by the commission in connection with the elimination of an imminent and substantial endangerment to the public health and safety or the environment under this subchapter is payable directly to the commission from the hazardous waste disposal fee fund. These payments include any costs of inspection or sampling and laboratory analysis of wastes, soils, air, surface water, and groundwater done on behalf of a state agency and the costs of investigations to identify and locate potentially responsible parties.
- (b) The commission shall seek remediation of facilities by potentially responsible parties before expenditure of federal or state funds for the remediations.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

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Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(g)(6).

§ 361.196. Remediation: Permits not Required; Liability

(a) Potentially responsible parties shall coordinate with ongoing federal and state hazardous waste programs although a state or local permit may not be required for any removal or remedial action conducted on site.

(b) Subject to Section 361.193, the state may enforce any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be required to conform if a permit were required.

(c) An action taken by the person to contain or remove a release or threatened release in accordance with an approved remedial action plan may not be construed as an admission of liability for the release or threatened release.

(d) A person who renders assistance in containing or removing a release or threatened release in accordance with an approved remedial action plan is not liable for any additional remediation costs at the facility resulting solely from acts or omissions of the person in rendering the assistance in compliance with the approvals required by this section, unless the remediation costs were caused by the person's gross negligence or wilful misconduct.

(e) Except as specifically provided by this section, these provisions do not expand or diminish the common law tort liability, if any, of private parties participating in a remediation action for civil damages to third parties.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

The subject matter of material formerly contained in § 361.203 is now contained in this section.

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7,
§ 13(g)(7)(A) to (D), (9).

§ 361.197. Cost Recovery

(a) The commission shall file a cost recovery action against all responsible parties who have not complied with the terms of an administrative order issued under Section 361.188. The commission shall file the cost recovery action no later than one year after all remedial action has been completed.

(b) The state may seek a judgment against the noncompliant parties for the total amount of the cost of the remedial action, including costs of any necessary studies and oversight costs, minus the amount agreed to be paid or expended by any other responsible parties under an order issued under Section 361.188.

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(c) The action may also include a plea seeking civil penalties for noncompliance with the commission's administrative order and a claim for up to double the state's costs if the responsible party's defenses are determined by the court to be unreasonable, frivolous, or without foundation.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703 §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7,
§ 13(g)(7)(F).

Cross References

Cost recovery by state, see § 361.341.
Hazardous and solid waste remediation fee fund, see § 361.133.

§ 361.198. Administrative or Civil Penalty

(a) A responsible party named in an administrative order who does not comply with the order is subject to the imposition of administrative or civil penalties under Section 361.252. The penalties may be assessed only from the date after which the administrative order becomes nonappealable.

(b) The commission may include provisions within an agreed administrative order that stipulate administrative penalty amounts for failure to comply with the order. The penalty provisions may be applicable to either or both the remedial investigation/feasibility study and remedial action orders.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

The 1990 amendment, to conform to Acts 1989, 71st Leg., ch. 703, § 5 rewrote the section which prior thereto read:

"Lien Foreclosure. The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien."

Prior Law:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7,
§ 13(g)(7)(E).

§ 361.199. Mixed Funding Program

The commission by rule shall adopt a mixed funding program in which available money from potentially responsible parties is combined with state or federal funds to clean up a facility in a timely manner. Use of the state or federal funds in a mixed funding approach does not preclude the state or federal government from seeking recovery of its costs from nonparticipating potentially responsible parties.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

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Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7,
§ 13(g)(7)(G), (H).

§ 361.200. De Minimis Settlement

The commission shall assess and by rule may develop and implement a de minimis settlement program. Under the program, the commission shall consider the advantages of developing a final settlement with potentially responsible parties that are responsible for only a minor portion of the response costs at a facility because the hazardous substances the party is responsible for are minimal in amount or in hazardous effect by comparison with the hazardous substances attributable to other parties.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7,
§ 13(g)(7)(I).

§ 361.201. Financial Capability and Funding Priority

(a) The commission may determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action. The commission by rule shall adopt the criteria for determination of financial capability.

(b) If no financially capable, potentially responsible parties exist for a facility, the commission shall issue an administrative order stating its determination that the facility constitutes an imminent and substantial endangerment and that there are no financially capable, potentially responsible parties. The commission shall then conduct its own remediation study and remedial action, using federal funds if available, or, if federal funds are not available, using state funds from the hazardous waste disposal fee fund.

(c) Generally, the remediation of listed facilities shall be achieved first by private party funding, second with the aid of federal funds, and third, if necessary, with state funds from the hazardous waste disposal fee fund.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.
Acts 1985, 69th Leg., ch. 567, § 2.

Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7,
§ 13(g)(7)(J).

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Cross References

Fee setting, consideration of cost of state-funded remedial action, see § 361.139.

§ 361.202. Deadline Extensions

The executive director or the commission may extend any period specified in this section if considered appropriate.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 29, eff. Sept. 6, 1990.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1989, 71st Leg., ch. 703, §§ 5, 6.
Vernon's Ann.Civ.St. art. 4477-7, § 13(g)(8).

[Sections 361.203 to 361.220 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT; CRIMINAL AND CIVIL PENALTIES

Cross References

Immediate removal actions at facilities, see § 361.191.
Indemnification of engineer or contractor, see § 361.405.

§ 361.221. Offenses and Criminal Penalties

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

(1) transports, or causes or permits to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have all required permits;

(2) stores, processes, exports, or disposes of, or causes to be stored, processed, exported, or disposed of, any hazardous waste without all permits required by the appropriate regulatory agency or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;

(3) omits or causes to be omitted material information or makes or causes to be made any false material statement or representation in any application, label, manifest, record, report, permit, plan, or other document filed, maintained, or used to comply with any requirement of this chapter applicable to hazardous waste;

(4) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, hazardous waste, whether the activity took place before or after September 1, 1981, and who knowingly destroys, alters, conceals, or does not file, or causes to be destroyed, altered, concealed, or not filed, any record, application, manifest, report, or other document

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required to be maintained or filed to comply with the rules of the appropriate regulatory agency adopted under this chapter; or

(5) transports without a manifest, or causes or permits to be transported without a manifest, any hazardous waste required by rules adopted under this chapter to be accompanied by a manifest.

(b) An individual who commits an offense under this section shall be subject on conviction to:

(1) a fine of not less than \$100 or more than \$50,000 for each act of violation and each day of violation;

(2) imprisonment not to exceed five years for a violation under Subsection (a)(1) or (2) or imprisonment not to exceed two years for any other violation under Subsection (a); or

(3) both fine and imprisonment.

(c) A person other than an individual that commits an offense under this section shall be subject on conviction to a fine of not less than \$1,000 or more than \$250,000.

(d) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$200 or more than \$100,000 for each day of violation;

(2) imprisonment not to exceed 10 years for a violation under Subsection (a)(1) or (2) or imprisonment not to exceed four years for any other violation under Subsection (a); or

(3) both fine and imprisonment.

(e) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than \$2,000 or more than \$500,000.

(f) Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in Travis County.

(g) A fine recovered through a prosecution brought under this section shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, it may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

(h) In this section, "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.04, eff. Sept. 1, 1991.

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Revisor's Note

The source law definition of "person" is omitted from this section and Section 361.222 because the definition is the same as the definition of "person" in the Code Construction Act (Chapter 311, Government Code) except for the exclusion of governments and governmental entities. The revised law excludes those entities.

Historical and Statutory Notes

The 1991 amendment, inserted "Offenses and" in the section head; in subsec. (a), in subd. (1), inserted "or permits" and substituted "all required permits" for "a permit as required by the commission exercising jurisdiction under this chapter", in subd. (2), substituted "exports or disposes of, or causes to be stored, processed, exported, or disposed of, any hazardous waste without all permits required by the appropriate regulatory agency" for "or disposes of, or causes to be stored, processed, or disposed of, any hazardous waste without a permit as required by the commission exercising jurisdiction under this chapter", in subd. (3), inserted "plan", in subd. (4), substituted "of the appropriate regulatory agency adopted" for "adopted by the commission", and in subd. (5), inserted "or permits" and deleted "by the commission" following "required by rules adopted"; in subsec. (b), in the introductory sentence, substituted "An individual" for "Except as provided by Subsection (c), a person"; inserted subsec. (c), redesignating former subsec. (c) as subsec. (d); in subsec. (d), provided for the substitution of "individual" for "defendant" in the introductory sentence; inserted subsec. (e); redesignating former subsec. (d) as subsec. (f); deleted former subsec. (e); inserted subsec. (g), and redesignated former subsec. (f), as subsec. (h). Prior to deletion former subsec. (e) provided:

"Unless otherwise provided by this chapter, a fine recovered under this section shall be equally divided between the state and the local government or governments that first brought the cause."

Section 8.30 of the 1991 amendatory act provides:

"(a) The changes in law made by this article apply only to a criminal offense committed on or after the effective date of this article.

"(b) For the purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date.

"(c) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 457, § 4.
Acts 1985, 69th Leg., ch. 795, § 7.003.
Vernon's Ann.Civ.St. art. 4477-7, § 8(b), (d) to (f).

Cross References

Remedial action proposed, see § 361.187.

Law Review Commentaries

Commanding respect: Criminal sanctions for environmental crimes. Eva M. Fromm, 21 St. Mary's L.J. 821 (1990).

Library References

Health and Environment ¶25.5(10).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 103 et seq., 113, 139, 140 et seq., 150 et seq.

§ 361.2215. Criminal Offenses and Penalties

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct:

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(1) tampers with, modifies, disables, or fails to use required pollution control or monitoring devices, systems, methods, or practices, unless in strict compliance with this chapter or with a valid and currently effective order, rule, or permit of the appropriate regulatory agency;

(2) releases, causes, or permits the release of a hazardous waste or causes or threatens to cause pollution, unless the release is made in strict compliance with all required permits or a valid and currently effective order, rule, or permit of the appropriate regulatory agency; or

(3) fails to notify or report to the appropriate regulatory agency required by this chapter or by a valid and currently effective order, rule, or permit of the appropriate regulatory agency.

(b) An individual who commits an offense under this section shall be subject on conviction to:

(1) a fine of not less than \$500 or more than \$100,000 for each act of violation and each day of violation;

(2) confinement in jail not to exceed one year; or

(3) both fine and confinement.

(c) A person other than an individual that commits an offense under this section shall be subject on conviction to a fine of not less than \$1,000 or more than \$250,000 for each act of violation and each day of violation.

(d) If it is shown on the trial of the defendant that the defendant has previously been convicted of the same offense under this section, the maximum punishment is doubled with respect to both the fine and imprisonment.

(e) Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in any county to which or through which the hazardous waste was transported.

(f) A fine recovered through a prosecution brought under this section shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, it may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.05, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 8.30 of the 1991 amendatory act provides:

(a) The changes in law made by this article apply only to a criminal offense committed on or after the effective date of this article.

(b) For the purposes of this section, an offense is committed before the effective date of

this article if any element of the offense occurs before that date.

(c) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

§ 361.222. Endangerment Offenses

(a) A person commits an offense if, acting intentionally or knowingly, the person transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of this chapter and thereby knowingly places any other person in imminent danger of death or serious bodily injury.

(b) An offense under Subsection (a) is punishable for an individual by:

- (1) a fine of not less than \$2,500 or more than \$250,000;
- (2) imprisonment for not more than 15 years; or
- (3) both fine and imprisonment.

(c) A person, other than an individual, that commits an offense under this section shall be subject on conviction to a fine of not less than \$5,000 or more than \$1 million.

(d) If an offense committed by an individual under Subsection (a) results in death or serious bodily injury to any person, the individual may be punished by:

- (1) a fine of not less than \$5,000 or more than \$500,000;
- (2) imprisonment for not less than two years or more than 30 years; or
- (3) both fine and imprisonment.

(e) If an offense committed by a person other than an individual under Subsection (a) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$10,000 or more than \$1,500,000.

(f) For purposes of Subsection (a), in determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for the defendant's actual awareness or actual belief possessed. Knowledge possessed by a person other than the defendant may not be attributed to the defendant. To prove a defendant's actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(g) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of this chapter, thereby placing any other person in imminent danger of death or serious bodily injury, unless the conduct charged is done in strict compliance with all required permits or with a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(h) An offense under Subsection (g) is punishable for an individual by:

- (1) a fine of not less than \$1,500 or more than \$150,000;

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(2) imprisonment for not more than five years; or

(3) both fine and imprisonment.

(i) An offense under Subsection (g) is punishable for a person other than an individual by a fine of not less than \$3,000 or more than \$300,000.

(j) If an offense committed under Subsection (g) results in death or serious bodily injury to any person, an individual may be punished by:

(1) a fine of not less than \$3,000 or more than \$300,000;

(2) imprisonment for not less than two years or more than 10 years; or

(3) both fine and imprisonment.

(k) If an offense committed by a person other than an individual under Subsection (g) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$6,000 or more than \$600,000.

(l) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, releases, causes, or permits the release of a hazardous waste into the environment, thereby placing any other person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

(m) An offense under Subsection (l) is punishable for an individual by:

(1) a fine of not less than \$1,500 or more than \$150,000;

(2) imprisonment for not more than five years; or

(3) both fine and imprisonment.

(n) An offense under Subsection (l) is punishable for a person other than an individual by a fine of not less than \$3,000 or more than \$300,000.

(o) If an offense committed by an individual under Subsection (l) results in death or serious bodily injury to any person, the individual may be punished by:

(1) a fine of not less than \$3,000 or more than \$300,000;

(2) imprisonment for not less than two years or more than 10 years; or

(3) both fine and imprisonment.

(p) If an offense committed by a person other than an individual under Subsection (l) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$6,000 or more than \$600,000.

(q) A person commits an offense if the person, acting recklessly with respect to the person's conduct, releases, causes, or permits the release of a hazardous waste into the environment, thereby placing any other person in imminent danger of death or serious bodily injury, unless the release is made in strict compliance with all required permits or a valid and currently effective order issued or rule adopted by the appropriate regulatory agency.

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- (r) An offense under Subsection (q) is punishable for an individual by:
- (1) a fine of not less than \$1,000 or more than \$100,000;
 - (2) confinement in jail not to exceed one year; or
 - (3) both fine and confinement.
- (s) An offense under Subsection (q) is punishable for a person other than an individual by a fine of not less than \$2,500 or more than \$250,000.
- (t) If an offense committed by an individual under Subsection (q) results in death or serious bodily injury to any person, the individual may be punished by:
- (1) a fine of not less than \$2,000 or more than \$200,000;
 - (2) confinement for not less than one year or more than two years; or
 - (3) both fine and confinement.
- (u) If an offense committed by a person other than an individual under Subsection (q) results in death or serious bodily injury to any person, the person may be punished by a fine of not less than \$5,000 or more than \$500,000.
- (v) It is an affirmative defense to prosecution under this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of the person's occupation, business, or profession or a medical treatment or medical or scientific experimentation conducted by professionally approved methods and the person endangered had been made aware of the risks involved before giving consent.
- (w) Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in Travis County.
- (x) A fine recovered through a prosecution brought under this section shall be divided equally between the state and any local government significantly involved in prosecuting the case, except that if the court determines that the state or the local government bore significantly more of the burden of prosecuting the case, it may apportion up to 75 percent of the fine to the government that predominantly prosecuted the case.

In this section, "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.06, eff. Sept. 1, 1991.

Historical and Statutory Notes

The 1991 amendment, in the section head, substituted "Endangerment Offenses" for "Knowing Endangerment; Criminal Penalty"; in subsec. (a), substituted "acting intentionally or knowingly" for "the person knowingly" and

substituted "thereby knowingly places any other" for "the person knows at the time that the person by the person's conduct places another"; in subsec. (b), in the introductory sen-

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tence, substituted "offense under Subsection (a) is punishable for an individual by a" for "individual who commits an offense under this section shall be subject on commission to", and in subd. (1), inserted "less than \$2500 or"; in subsec. (c), inserted "less than \$5,000 or"; deleted former subsec. (d), inserted subsecs. (d) to (v), redesignating former subsec. (e), as subsec. (w); inserted subsec. (x); deleted former subsec. (f), and redesignated former subsec. (g) as subsec. (y).

Prior to deletion, former subsecs. (d) and (f) provided:

"(d) It is an affirmative defense to a prosecution under this section that the person endangered consented to the conduct charged and that the danger and conduct charged were reasonably foreseeable hazards of:

"(1) an occupation, business or profession; or

"(2) medical treatment or medical or scientific experimentation conducted by professionally approved methods if the endangered person had been made aware of the risks involved before giving consent."

"(f) Unless otherwise provided by this chapter, a fine recovered under this section shall be

equally divided between the state and the local government or governments that first brought the cause."

Section 8.30 of the 1991 amendatory act provides:

(a) The changes in law made by this article apply only to a criminal offense committed on or after the effective date of this article.

(b) For the purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date.

(c) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

Prior Laws:

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1985, 69th Leg., ch. 457, § 4.

Vernon's Ann.Civ.St. art. 4477-7, § 8(c) to (f).

Law Review Commentaries

Commanding respect: Criminal sanctions for environmental crimes. Eva M. Fromm, 21 St. Mary's L.J. 821 (1990).

§ 361.2225. Failure to Pay Fees; Criminal Penalties

(a) A person commits an offense if the person intentionally or knowingly fails to pay a fee required by this chapter or by a valid and currently effective order, rule, or permit of the appropriate regulatory agency.

(b) An offense under this section is punishable by:

(1) a fine of up to twice the amount of the required fee, confinement in jail not to exceed 90 days, or both fine and confinement, for an individual; and

(2) a fine of up to twice the amount of the required fee for a person other than an individual.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.07, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 8.30 of the 1991 Act provides:

"(a) The changes in law made by this article apply only to a criminal offense committed on or after the effective date of this article.

"(b) For the purposes of this section, an offense is committed before the effective date of

this article if any element of the offense occurs before that date.

"(c) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and

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the former law is continued in effect for this purpose."

§ 361.2226. Affirmative Defense

It is an affirmative defense to prosecution under Sections 361.221, 361.2215, 361.222, and 361.2225 that the person charged was an employee who was carrying out the person's normal activities and was acting under orders from the person's employer, unless the person charged engaged in knowing and wilful violations.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.08, eff. Sept. 1, 1991.

§ 361.223. Civil Penalties

(a) A person may not cause, suffer, allow, or permit the collection, storage, handling, transportation, processing, or disposal of solid waste or the use or operation of a solid waste facility to store, process, or dispose of solid waste or to extract materials under Section 361.092 in violation of this chapter or a rule, permit, license, or other order of the department or commission, or a county or a political subdivision exercising the authority granted by Section 361.165 in whose jurisdiction the violation occurs.

(b) Any person who violates any provision of this chapter or any rule, permit, license, or order of the department or commission, or a county or a political subdivision exercising the authority granted by Section 361.165 in whose jurisdiction the violation occurs is subject to a civil penalty of not less than \$100 or more than \$25,000 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided by this section.

(c) A civil penalty recovered in a suit first brought by a local government or governments under this chapter shall be equally divided between the state and the local government or governments that first brought the suit, and the state shall deposit its recovery to the credit of the general revenue fund.

(d) The penalties imposed under this section do not apply to failure to pay a fee under Sections 361.134–361.136 or failure to file a report under Section 361.035. Subsection (c) does not apply to interest and penalties imposed under Section 361.137.

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

Revisor's Note

(1) The revised law omits as unnecessary the provision in Section 8(a)(8) of the source law authorizing either party to appeal from a final judgment of the court as in other civil cases. Under Article V, Section 6, of the Texas Constitution and Subchapter B, Chapter 51, Civil Practice and Remedies Code, the courts of appeals have jurisdiction over appeals from district courts, and the procedures for those appeals are provided by the Rules of Civil Procedure. The omitted provision reads as follows:

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(8) Any party to a suit may appeal from a final judgment as in other civil cases.

(2) The revised law omits the direction in Section 8(a)(9) of the source law that penalties collected be deposited in the general revenue fund for the reason stated in Revisor's Note (2) under Section 361.013. The omitted provision reads as follows:

(9) All civil penalties recovered in suits instituted under this Act by the State of Texas through the commission or the department shall be paid to the General Revenue Fund of the State of Texas.

Historical and Statutory Notes

Prior Laws:

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1983, 68th Leg., p. 2947, ch. 503, § 3.

Acts 1985, 69th Leg., ch. 795, § 1.166.

Acts 1985, 69th Leg., ch. 931, art. 8, § 4.

Acts 1987, 70th Leg., ch. 279, § 11.

Vernon's Ann.Civ.St. art. 4477-7, §§ 8(a)(1), (2), (9); 8(i).

Notes of Decisions

In general 1 Pleading 2

1. In general

Provision of statute stating that violator "is subject to" civil penalty of at least \$100 per violation per day required imposition of mandatory fine within statutory range upon finding of violation. *State v. City of Greenville* (App. 5 Dist.1986) 726 S.W.2d 162, ref. n.r.e.

2. Pleading

Civil penalties sought by state in pending suit against deponent and possibility that an answer by deponent might tend to subject him to those penalties or to any penalty provided by this article constituted no ground upon which deponent could refuse to answer. *Ex parte Butler* (Sup.1975) 522 S.W.2d 196.

A civil action for civil penalties under this article is not penal and does not invoke the pleading requirement of the Penal Code. *State v. Hart* (App. 9 Dist.1988) 753 S.W.2d 213.

§ 361.224. Suit by State

(a) If it appears that a person has violated, is violating, or is threatening to violate any provision of this chapter or of any rule, permit, or other order of the department or commission, the department or the commission may request a civil suit to be brought in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty as provided by this subchapter, as the court may consider proper; or

(3) both the injunctive relief and civil penalty.

(b) At the request of the commissioner or the executive director, the attorney general shall bring and conduct the suit in the name of the state.

(c) The commissioner or the executive director shall refer matters to the attorney general's office for enforcement through civil suit if a person:

(1) is alleged to be operating a new facility without a permit in violation of state law; or

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(2) has been the subject of two or more finally issued administrative penalty orders under this chapter for violations occurring at the same facility within two years immediately before the first alleged violation currently under investigation at that facility.

(d) Violations that were reported by the violator or violations consisting of errors in recordkeeping or in self-reporting submissions may not be considered in determining whether Subsection (c) applies.

(e) Even though the criteria of Subsection (c) are met, the attorney general's office and the executive director may agree to resolve any of the alleged violations, before or after referral, by administrative order issued by the appropriate regulatory agency with the approval of the attorney general.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.09, eff. Sept. 1, 1991.

Historical and Statutory Notes

The 1991 amendment added subsecs. (c), (d), and (e).

For provisions relating to the effect of the 1991 amendment, see the Historical and Statutory Note following § 361.221.

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1985, 69th Leg., ch. 795, § 1.166.

Vernon's Ann.Civ.St. art. 4477-7, § 8(a)(3).

Prior Laws:

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

Notes of Decisions

Pleading 1

1. Pleading

State's action against the operator of a creosoting company was improperly dismissed because of the State's four-day delay in filing its

amended pleading where the State's original petition alleging violations of this article was quite explicit and gave the operator notice of the State's contention, and there was no contention that the operator was in any way harmed by the delay. *State v. Hart* (App. 9 Dist.1988) 753 S.W.2d 213.

§ 361.225. Suit by County or Political Subdivision

If it appears that a violation or threat of violation of any provision of this chapter or any rule, permit, license, or other order of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165 has occurred or is occurring in the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the commission and the department, may institute a civil suit in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by Section 361.224, against the person who committed, is committing, or is threatening to commit the violation.

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1985, 69th Leg., ch. 795, § 1.166.
Vernon's Ann.Civ.St. art. 4477-7, § 8(a)(4).

§ 361.226. Suit by Municipality

If it appears that a violation or threat of violation of any provision of this chapter or any rule, permit, license, or other order of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165 has occurred or is occurring in a municipality or its extraterritorial jurisdiction, or is causing or will cause injury to or an adverse effect on the health, welfare, or physical property of the municipality or its inhabitants, the municipality, in the same manner as the department and the commission, may institute a civil suit in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by Section 361.224, against the person who committed, is committing, or is threatening to commit the violation.

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

Revisor's Note

The source law refers to "incorporated city or town" and "city or town." The revised law substitutes "municipality" for the reason stated in Revisor's Note (3) under Section 361.003.

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 125, § 1.
Acts 1985, 69th Leg., ch. 795, § 1.166.
Vernon's Ann.Civ.St. art. 4477-7, § 8(a)(5).

§ 361.227. Venue

A suit for injunctive relief or for recovery of a civil penalty, or for both, may be brought in:

- (1) the county in which the defendant resides;
- (2) the county in which the violation or threat of violation occurs; or
- (3) Travis County if the suit involves an unpermitted municipal solid waste facility.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 26, eff. Sept. 6, 1990.

Historical and Statutory Notes

The 1990 amendment, to conform to Acts 1989, 71st Leg., ch. 639, § 1, rewrote the section which prior thereto read:

"A suit for injunctive relief or for recovery of a civil penalty, or for both, may be brought in the county in which the defendant resides or in

the county in which the violation or threat of violation occurs."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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Note 1

Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 1.166.

Acts 1989, 71st Leg., ch. 639, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 8(a)(6).

§ 361.228. Injunction

(a) On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or of any rule, permit, or other order of the department or the commission, the district court shall grant appropriate injunctive relief.

(b) In a suit brought to enjoin a violation or threat of violation of this chapter or of any rule, permit, license, or order of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the court may grant any prohibitory or mandatory injunction warranted by the facts, including a temporary restraining order after notice and hearing, a temporary injunction, and a permanent injunction. The court shall grant injunctive relief without bond or other undertaking by the governmental entity.

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

Historical and Statutory Notes

Section 4 of Acts 1989, 71st Leg., ch. 639, provides:

"(a) This Act takes effect September 1, 1989, and applies only to:

"(1) a suit instituted on or after that date for:

"(A) injunctive relief or a civil penalty under Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by this Act; or

"(B) injunctive relief under Article II, Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), as amended by this Act; and

"(2) an offense committed under Article II, Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), as amended by this Act.

"(b) A suit for injunctive relief or for recovery of a civil penalty as provided by Subdivision (1) of Subsection (a) of this section instituted before the effective date of this Act is

covered by the law in effect when the suit is instituted, and the former law is continued in effect for that purpose.

"(c) For the purposes of Subdivision (2) of Subsection (a) of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose."

Prior Laws:

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1985, 69th Leg., ch. 795, § 1.166.

Vernon's Ann.Civ.St. art. 4477-7, § 8(a)(3), (6).

Notes of Decisions

Appeal 1

1. Appeal

Trial court's order determining merits of claim for injunction, granting part of injunctive relief requested permanently, and denying

part of it permanently, was not an appealable temporary injunction, since relief granted was not temporary in the sense that it was effective only until a trial on merits, nor did order provide that part of injunctive relief sought was denied until further hearing. *City of Garland v. Futerfas* (App. 5 Dist.1983) 665 S.W.2d 140.

§ 361.229**SANITATION AND ENVIRONMENTAL QUALITY**
Title 5**§ 361.229. Parties in Suit by Local Government**

In a suit brought by a local government under Section 361.225 or 361.226, the department and the commission are necessary and indispensable parties.

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

Historical and Statutory Notes**Prior Laws:**

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

Acts 1985, 69th Leg., ch. 795, § 1.166.
Vernon's Ann.Civ.St. art. 4477-7, § 8(a)(7).

§ 361.230. Fees and Costs Recoverable

If the attorney general or a local government institutes a suit under this subchapter or Subchapter I for injunctive relief, recovery of a civil penalty, or both injunctive relief and a civil penalty, the prevailing party may recover its reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding. However, the amount awarded by the court may not exceed \$250,000.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 27, eff. Sept. 6, 1990.

Historical and Statutory Notes**Prior Laws:**

Acts 1989, 71st Leg., ch. 639, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 8(a)(10).

§ 361.231. Notice of Criminal Conviction

(a) In addition to a sentence that may be imposed under this chapter, a person other than an individual that has been convicted of an offense under this chapter may be ordered by the court to give notice of the conviction to any person the court considers appropriate.

(b) On conviction under this chapter, the clerk of the court in which the conviction is returned shall forward a copy of the judgment to the regulatory agency.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.10, eff. Sept. 1, 1991.

§ 361.232. Criminal Fine Treated as Judgment in Civil Action

A fine imposed by a court under this chapter against a person other than an individual shall be entered by the clerk of the court as a judgment against the person. A fine so entered has the same force and effect and may be enforced in the same manner as a judgment entered in a civil action.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.11, eff. Sept. 1, 1991.

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§ 361.233. Effect on Certain Other Laws

Conduct punishable as an offense under this chapter that is also punishable under another law may be prosecuted under either this chapter or the other law.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.12, eff. Sept. 1, 1991.

§ 361.234. Defense Excluded

It is not a defense to prosecution under this chapter that the actor did not know or was not aware of a rule, order, or statute.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.13, eff. Sept. 1, 1991.

§ 361.235. Testimonial Immunity

A party to a criminal offense under this chapter may be required to furnish evidence or testify about the offense. Evidence or testimony required to be furnished under this chapter or information directly or indirectly derived from that evidence or testimony may not be used against the witness in a criminal case, except a prosecution for aggravated perjury or contempt.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.14, eff. Sept. 1, 1991.

[Sections 361.236 to 361.250 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT; ADMINISTRATIVE PENALTIES

§ 361.251. Administrative Penalty by Department

(a) The department may assess a civil penalty against a person as provided by this section if:

(1) the person violates:

(A) a provision of this chapter that is under the department's jurisdiction;

(B) a rule adopted by the board of health; or

(C) an order, license, or permit issued by the department under this chapter; and

(2) no county, political subdivision, or municipality has instituted a lawsuit and is diligently prosecuting that lawsuit under Section 361.225 or 361.226 against the same person for the same violation.

(b) The amount of the penalty may not exceed \$10,000 a day for a person who violates this chapter or a rule, order, license, or permit issued under this chapter. Each day a violation continues may be considered a separate violation.

(c) In determining the amount of the penalty, the department shall consider:

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(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health or safety of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a preliminary report:

(1) stating the facts that support the conclusion;

(2) recommending that a civil penalty under this section be imposed; and

(3) recommending the amount of the penalty, which shall be based on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the department shall give written notice of the report to the person charged with the violation. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of the penalty recommended; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may give to the commissioner written consent to the department's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the commissioner or does not timely respond to the notice, the commissioner or the commissioner's designee by order shall assess the penalty or order a hearing to be held on the findings and recommendations in the department's report. If the commissioner or the commissioner's designee assesses the penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

(h) If the person charged requests or the commissioner orders a hearing, the commissioner shall order and shall give notice of the hearing.

(i) The hearing shall be held by a hearing examiner designated by the commissioner.

(j) The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and a recommendation of the amount of the proposed penalty if a penalty is warranted.

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(k) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner by order may find that a violation has occurred and assess a civil penalty or may find that no violation occurred.

(l) All proceedings under Subsections (h)-(k) are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) The commissioner shall give notice of the commissioner's decision to the person charged, and if the commissioner finds that a violation has occurred and assesses a civil penalty, the commissioner shall give written notice to the person charged of:

- (1) the commissioner's findings;
- (2) the amount of the penalty; and
- (3) the person's right to judicial review of the commissioner's order.

(n) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall pay the penalty in full or file a petition for judicial review.

(o) If the person seeks judicial review of the fact of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (n), shall:

- (1) send the amount of the penalty to the commissioner for placement in an escrow account; or
- (2) post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(p) A person who fails to comply with Subsection (o) waives the right to judicial review, and the commissioner may refer the matter to the attorney general for enforcement.

(q) Judicial review of the order or decision of the commissioner assessing the penalty shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(r) If the penalty is reduced or not assessed, the commissioner shall:

- (1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or
- (2) execute a release of the bond if a supersedeas bond has been posted.

(s) The accrued interest on amounts remitted by the commissioner shall be paid:

- (1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
- (2) for the period beginning on the date the penalty is paid to the commissioner under Subsection (o) and ending on the date the penalty is remitted.

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(t) A penalty collected under this section shall be deposited to the credit of the general revenue fund.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.15, eff. Sept. 1, 1991.

Revisor's Note

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

(2) The source law refers to "a rule, order, license, permit or regulation" issued by the department. The reference to "regulation" is omitted from the revised law for the reason stated in Revisor's Note (2) under Section 361.032.

(3) The revised law omits the reference in Section 8a(j) of the source law relating to final orders as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) because it is clear from Section 361.251(1) that the act applies to the issuance of that order.

(4) The source law states that judicial review of an order or decision of the commissioner must be under the substantial evidence rule and is instituted by filing a petition with a district court in Travis County as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The revised law omits the provision as unnecessary because it is clear from Section 361.251(1) that the hearing constitutes a contested case. As such, the judicial review provisions of Section 19 of the Administrative Procedure and Texas Register Act apply without an express statement to that effect. In addition, a court reviewing a proceeding governed by the act is required under Section 19 of the act to use the substantial evidence rule unless the law authorizing the proceeding requires otherwise.

(5) The revised law omits the direction that penalties collected be deposited in the general revenue fund for the reason stated in Revisor's Note (2) under Section 361.013.

Historical and Statutory Notes

The 1991 amendment rewrote subsec. (1), which formerly provided:

"(a) The department may assess a civil penalty against a person as provided by this section if the person violates:

"(1) a provision of this chapter that is under the department's jurisdiction; or

"(2) a rule adopted by the board of health or order, license, or permit issued by the department under this chapter."

Prior Laws:

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1985, 69th Leg., ch. 931, art. 8, § 4.

Vernon's Ann.Civ.St. art. 4477-7, § 8a(a) to (n).

Library References

Health and Environment ⇨25.5(10).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 103 et seq., 113, 139, 140 et seq., 150 et seq.

§ 361.252. Administrative Penalty by Commission

(a) The commission may assess a civil penalty against a person as provided by this section if:

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- (1) the person violates:
 - (A) a provision of this chapter concerning solid waste that is under the commission's jurisdiction;
 - (B) a rule or order adopted by the commission concerning solid waste that is under the commission's jurisdiction; or
 - (C) a solid waste permit or registration issued by the commission under this chapter; and
- (2) no county, political subdivision, or municipality has instituted a lawsuit and is diligently prosecuting that lawsuit under Section 361.225 or 361.226 against the same person for the same violation.
- (b) The amount of the penalty may not exceed \$10,000 a day for a person who violates this chapter or a rule, order, or permit issued under this chapter. Each day a violation continues may be considered a separate violation.
- (c) In determining the amount of the penalty, the commission shall consider:
 - (1) the nature, circumstances, extent, duration, and gravity of the prohibited act with special emphasis on the hazard or potential hazard created to the health or safety of the public;
 - (2) the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;
 - (3) with respect to the alleged violator:
 - (A) the history and extent of previous violations;
 - (B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
 - (C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation;
 - (D) economic benefit gained by the violation; and
 - (E) the amount necessary to deter future violations; and
 - (4) any other matters that justice may require.
- (d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report:
 - (1) stating the facts that support the conclusion;
 - (2) recommending that a civil penalty under this section be imposed; and
 - (3) recommending the amount of the penalty, which shall be based on the factors prescribed by Subsection (c), including an analysis of each factor for the commission.
- (e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice must include:

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(1) a brief summary of the charges;

(2) a statement of the amount of the penalty recommended; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Not later than the 20th day after the date on which notice is received, the person charged may give to the commission written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice, the commission by order shall assess the penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty, the commission shall give written notice to the person charged of its decision.

(h) If the person charged requests or the commission orders a hearing, the commission shall order and shall give notice of the hearing. The commission by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. In making a penalty decision, the commission shall analyze each factor prescribed by Subsection (c). All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and assesses a civil penalty, the commission shall give written notice to the person charged of:

(1) the commission's findings;

(2) the amount of the penalty; and

(3) the person's right to judicial review of the commission's order.

(j) If the commission is required to give notice of a civil penalty under Subsection (g) or (i), the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(k) Not later than the 30th day after the date on which the commission's order is final, the person charged with the penalty shall pay the penalty in full or file a petition for judicial review.

(l) If the person seeks judicial review of the fact of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (k), shall:

(1) send the amount of the penalty to the commission for placement in an escrow account; or

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(2) post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(m) A person who fails to comply with Subsection (l) waives the right to judicial review, and the commission or the executive director may refer the matter to the attorney general for enforcement.

(n) Judicial review of the order or decision of the commission assessing the penalty shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(o) The commission may compromise, modify, or remit, with or without conditions, a civil penalty imposed under this section.

(p) Payment of a penalty under this section is full and complete satisfaction of the violation for which the administrative penalty is assessed and precludes any other civil or criminal penalty for the same violation.

(q) A penalty collected under this section shall be deposited to the credit of the general revenue fund.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 8.16, eff. Sept. 1, 1991.

Revisor's Note

(1) The revised law omits the references to final orders and judicial review for the reasons stated in Revisor's Notes (3) and (4) under Section 361.251.

(2) The revised law omits the direction that penalties collected be deposited in the general revenue fund for the reason stated in Revisor's Note (2) under Section 361.013.

Historical and Statutory Notes

The 1991 amendment rewrote subsec. (a), which formerly provided:

"The commission may assess a civil penalty against a person as provided by this section if the person violates:

"(1) a provision of this chapter concerning solid waste that is under the commission's jurisdiction;

"(2) a rule or order adopted by the commission concerning solid waste that is under the commission's jurisdiction; or

"(3) a solid waste permit or registration issued by the commission under this chapter."

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 8, 10.
Acts 1985, 69th Leg., ch. 795, § 6.001.
Vernon's Ann.Civ.St. art. 4477-7, § 8b(a) to (o).

Cross References

Administrative or civil penalty, noncompliance with order, see § 361.198.
Indemnification of engineer or contractor, see § 361.405.

[Sections 361.253 to 361.270 reserved for expansion]

§ 361.271

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SUBCHAPTER I. ENFORCEMENT; ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT

Cross References

Cost recovery by state, see § 361.341.
Final administrative order, see § 361.188.
Hazardous waste facilities, registry listing, see § 361.183.
Immediate removal actions at facilities, see § 361.191.
Indemnification of engineer or contractor, see § 361.405.

§ 361.271. Persons Responsible for Solid Waste

For the purpose of this subchapter, a person is responsible for solid waste if the person:

- (1) is any owner or operator of a solid waste facility;
- (2) owned or operated a solid waste facility at the time of processing, storage, or disposal of any solid waste;
- (3) by contract, agreement, or otherwise, arranged to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, by any other person or entity at:
 - (A) the solid waste facility owned or operated by another person or entity that contains the solid waste; or
 - (B) the site to which the solid waste was transported that contains the solid waste; or
- (4) accepts or accepted any solid waste for transport to a solid waste facility or site selected by the person.

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 9.
Acts 1985, 69th Leg., ch. 567, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 8(g)(2).

Cross References

Remedial action proposed, see § 361.187.

Law Review Commentaries

Commanding respect: Criminal sanctions for environmental crimes. Eva M. Fromm, 21 St. Mary's L.J. 821 (1990).

Library References

Health and Environment ¶25.5(10).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 103 et seq., 113, 139, 140 et seq., 150 et seq.

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§ 361.272. Administrative Orders Concerning Imminent and Substantial Endangerment

(a) The department or the commission, as appropriate, may issue an administrative order to a person responsible for solid waste if it appears that there is an actual or threatened release of solid waste that presents an imminent and substantial endangerment to the public health and safety or the environment:

- (1) from a solid waste facility at which solid waste is stored, processed, or disposed of; or
- (2) at any site at which one or more of those activities concerning solid waste have been conducted in the past, regardless of whether the activity was lawful at the time.

(b) An administrative order may be issued under this section to:

- (1) restrain the person from allowing or continuing the release or threatened release; and
- (2) require the person to take any action necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

(c) An administrative order issued under this section shall:

- (1) be delivered to the persons identified by the order by certified mail, return receipt requested;
 - (2) be delivered by hand delivery to the person identified by the order; or
 - (3) on failure of delivery of the order by certified mail or hand delivery, be served on the persons by publication:
 - (A) once in the Texas Register; and
 - (B) once in a newspaper of general circulation in each county in which a person identified by the order had the person's last known address.
- Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989.

Revisor's Note

The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 9.
Acts 1985, 69th Leg., ch. 567, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 8(g)(1), (2).

Cross References

Appeal of administrative order, see § 361.322.

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§ 361.273. Injunction as Alternative to Administrative Order

The department or commission, as appropriate, may cause a civil suit for injunctive relief to be brought in a district court in the county in which the actual release is occurring or threatened release may occur to:

- (1) restrain a person responsible for solid waste under Section 361.271 from allowing or continuing the release or threatened release; and
- (2) require the person to take actions necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

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

Revisor's Note

The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 9.
Acts 1985, 69th Leg., ch. 567, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 8(g)(1).

§ 361.274. No Prior Notice Concerning Administrative Order

An administrative order under Section 361.272 does not require prior notice or an adjudicative hearing before the department or commission.

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

Revisor's Note

The revised law omits the reference to an order being "an executive act" because it does not add to the meaning of the law.

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 9.
Acts 1985, 69th Leg., ch. 567, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 8(g)(1).

§ 361.275. Defenses

(a) A person responsible for solid waste under Section 361.271 is liable under Section 361.272 or 361.273 unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by:

- (1) an act of God;

- (2) an act of war;
 - (3) an act or omission of a third person; or
 - (4) any combination of Subdivisions (1), (2), and (3).
- (b) In a defense under Subsection (a)(3), the defendant must establish by a preponderance of the evidence that the defendant:
- (1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and
 - (2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.
- (c) The defense under Subsection (a)(3) does not apply if the third person:
- (1) is an employee or agent of the defendant; or
 - (2) has a direct or indirect contractual relationship with the defendant and the act or omission of the third person occurred in connection with the contractual relationship.
- (d) In Subsection (c)(2), "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.
- (e) A defendant who enters into a contractual relationship as provided by Subsection (c)(2) is not liable under this subchapter if:
- (1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or
 - (2) the defendant acquired the real property on which the facility requiring the remedial action is located, after the disposal or placement of the hazardous substance on, in, or at the facility and the defendant establishes by a preponderance of the evidence that:
 - (A) the defendant has satisfied Subsection (b);
 - (B) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;
 - (C) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or
 - (D) the defendant acquired the facility by inheritance or bequest.
- (f) To demonstrate the condition under Subsection (e)(2)(B), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

- (1) any specialized knowledge or experience of the defendant;

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(2) the relationship of the purchase price to the value of the property if the property were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obvious presence or likely presence of contamination of the property; and

(5) the defendant's ability to detect the contamination by appropriate inspection.

(g) This section does not decrease the liability of a previous owner or operator of a facility who is liable under this chapter. If the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(h) Subsections (e)-(g) do not affect the liability under this chapter of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility.

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1985, 69th Leg., ch. 566, § 9.

Acts 1985 69th Leg., ch. 567, § 1.

Acts 1987, 70th Leg., ch. 279, § 10.

Vernon's Ann.Civ.St. art. 4477-7, § 8(g)(3), (6).

§ 361.276. Apportionment of Liability

(a) If the release or threatened release caused by a person's acts or omissions is proved by a preponderance of the evidence to be divisible, that person is liable only for the elimination of that release or threatened release attributable to the person. If the release or threatened release is not proved to be divisible, persons liable under Section 361.272 or 361.273 are jointly and severally liable for eliminating the release or threatened release.

(b) In this section, "divisible" means that the waste released or threatened to be released has been and is capable of being managed separately under the remedial action plan.

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1985, 69th Leg., ch. 566, § 9.

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Acts 1985, 69th Leg., ch. 567, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 8(g)(4).

§ 361.277. Judgment by State Against Nonsettling Party; Action for Contribution by Nonsettling Party

(a) If fewer than all of the persons identified as liable under this subchapter agree with the state to take remedial action to abate an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment under an administrative order issued under Section 361.272 or an action filed by the state under this subchapter, the state may seek a judgment against a nonsettling person for the total amount of the cost of the remedial action minus that amount the settling persons agree to pay or spend.

(b) In an action for contribution brought by a nonsettling person against a settling person, the nonsettling person has the burden to prove that the amount of cleanup costs that a settling person agreed to pay under an agreement with the state is unreasonable considering the factors under Section 361.343 and the need to undertake timely cleanup action concerning the release or threatened release.

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1985, 69th Leg., ch. 566, § 9.
Acts 1985, 69th Leg., ch. 567, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 8(g)(5).

§ 361.278. Liability of Engineer or Contractor

(a) An engineer or contractor performing a program of remedial action or cleanup of hazardous waste or solid waste under a contract with a state agency or political subdivision of the state is liable under this subchapter for any negligent act or omission or for wilful misconduct that results in an actual or threatened release of hazardous waste or solid waste after the abandonment or conclusion of the program only to the extent that the endangerment to public health and safety or the environment is aggravated as a result of the act, omission, or misconduct.

(b) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with:

- (1) identifying a hazardous or solid waste site;
- (2) developing a plan to clean up the site; or
- (3) supervising or implementing the plan to clean up the site.

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

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

Acts 1987, 70th Leg., ch. 302, § 2.
Vernon's Ann.Civ.St. art. 4477-7, § 8(i).

§ 361.279. Contracts With State

A state agency contracting for services or products shall consider whether the person proposing to contract with the state has been adjudicated during the preceding three-year period to have committed substantive, nonclerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial danger to the public health and safety or the environment.

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

Historical and Statutory Notes**Prior Laws:**

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

Acts 1985, 69th Leg., ch. 566, § 10.
Vernon's Ann.Civ.St. art. 4477-7, § 8(h).

§ 361.280. Remedies Cumulative

(a) The remedies under this subchapter are cumulative of all other remedies.

(b) This subchapter does not exempt a person from complying with or being subject to other law.

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

Historical and Statutory Notes**Prior Laws:**

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

Acts 1985, 69th Leg., ch. 566, § 9.
Acts 1985, 69th Leg., ch. 567, § 1.
Vernon's Ann.Civ.St. art. 4477-7, § 8(g)(1).

[Sections 361.281 to 361.300 reserved for expansion]

**SUBCHAPTER J. ENFORCEMENT; EMERGENCY
ORDER; CORRECTIVE ACTION****§ 361.301. Emergency Order**

(a) The department and the commission may each issue an emergency mandatory or prohibitory order concerning an activity of solid waste manage-

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ment under its jurisdiction, even if the activity is not covered by a permit, if the agency determines that an emergency requiring immediate action to protect the public health and safety or the environment exists.

(b) The order may be issued without notice and hearing or with notice and hearing the agency considers practicable under the circumstances.

(c) If an emergency order is issued under this section without a hearing, the issuing agency shall set a time and place for a hearing to be held in accordance with the rules of the board of health or commission to affirm, modify, or set aside the emergency order.

(d) The requirements of Section 361.088 concerning public notice do not apply to the hearing, but general notice of the hearing shall be given in accordance with the rules of the board of health or commission.

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

Revisor's Note

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

Historical and Statutory Notes

Prior Laws:

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

Acts 1983, 68th Leg., p. 2443, ch. 435, § 2.
Acts 1985, 69th Leg., ch. 566, § 4.
Vernon's Ann.Civ.St. art. 4477-7, § 4(e)(10).

Library References

Health and Environment ⇐25.5(10).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 103 et seq., 113, 139, 140 et seq., 150 et seq.

§ 361.302. Issuance of Order by Commission

(a) The commission may issue an order to a person requiring compliance with this chapter and prescribing the corrective action that the person must take to achieve compliance if the person violates:

(1) the provisions of this chapter concerning solid waste under the commission's jurisdiction;

(2) a rule or order adopted by the commission concerning solid waste under the commission's jurisdiction; or

(3) a solid waste permit or registration issued by the commission under this chapter.

(b) The order may be issued instead of or in addition to an order under Section 361.252 assessing an administrative civil penalty.

(c) Judicial review of an order issued under this section is in the district court of the county in which the alleged violation occurred.

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

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Prior Laws:

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

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

§ 361.303. Corrective Action

(a) The commission shall require corrective action for a release of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of when the waste is placed in the unit.

(b) The commission shall establish schedules for compliance for the corrective action, if the corrective action cannot be completed before permit issuance, and shall require assurances of financial responsibility for completing the corrective action.

(c) If, before the issuance of a permit, the commission determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), the commission may:

- (1) issue an order requiring corrective action or other response measure considered necessary to protect human health or the environment; or
- (2) institute a civil action under Section 361.224.

(d) An order issued under this section:

- (1) may include a suspension or revocation of authorization to operate;
- (2) must state with reasonable specificity the nature of the required corrective action or other response measure; and
- (3) must specify a time for compliance.

(e) If any person named in the order does not comply with the order, the agency issuing the order may assess a civil penalty in accordance with this chapter.

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

Historical and Statutory Notes

Prior Laws:

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

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

[Sections 361.304 to 361.320 reserved for expansion]

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SUBCHAPTER K. APPEALS; JOINDER OF PARTIES

Cross References

Final administrative order, see § 361.188.

§ 361.321. Appeals

(a) A person affected by a ruling, order, decision, or other act of the department or the commission may appeal the action by filing a petition in the district court of Travis County.

(b) A person affected by a ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted by Section 361.165, may appeal by filing a petition in a district court with jurisdiction in the county or political subdivision.

(c) Except as provided by Section 361.322(a), the petition must be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed. Service of citation must be accomplished not later than the 30th day after the date on which the petition is filed.

(d) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(e) Except as provided by Section 361.322(e), in an appeal from an action of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the issue is whether the action is invalid, arbitrary, or unreasonable.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 28, eff. Sept. 6, 1990.

Historical and Statutory Notes

The 1990 amendment, to conform to Acts 1989, 71st Leg., ch. 703, § 3, in subsec. (c) substituted "361.322(a)" for "361.322(b)".

Prior Laws:

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1985, 69th Leg., ch. 566, § 11.
Acts 1985, 69th Leg., ch. 795, § 1.167.
Acts 1989, 71st Leg., ch. 703, § 3.
Vernon's Ann.Civ.St. art. 4477-7, § 9(a).

Library References

Health and Environment ⇨25.15(1) to (12).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 82 to 113,
123, 124, 146 to 153.

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violation of said subdivision which encompassed more than discharge of waste and also sought criminal penalties, which claims were expressly reserved for later hearing. *City of Garland v. Futerfas* (App. 5 Dist. 1983) 665 S.W.2d 140.

1. Appealable order

Granting of permit by Texas Department of Health Resources, now Texas Department of Health, to city to operate sanitary landfill was not final order, and hence was not reviewable, where permit provided as one condition that, before site became operational, city had to submit and obtain approval from Department of site access plan indicating its capability to construct and maintain all-weather access road to existing public road and where Department had not approved such a plan. *Walker Creek Homeowners Ass'n of Ellis County v. Texas Dept. of Health Resources* (Civ.App. 1979) 581 S.W.2d 196.

Condition on permit to develop solid waste disposal facility, which required permittee to submit a revised completion plan to Department of Health before any excavation was begun, did not require permittee to secure Department approval of revised completion plan and consequently there was final appealable order from agency and district court properly had jurisdiction to review Department of Health action. *Browning-Ferris, Inc. v. Johnson* (App. 1982) 644 S.W.2d 123, ref. n.r.e.

Portion of order by trial court finding that landowners did not own and were not responsible for abatement of nuisances on a strip of land and that landowners did not cause, allow, suffer or permit discharge of solid waste on their land in violation of statute, was not appealable as a final order, since the city alleged

2. Standing to appeal

Statute gives standing to appeal a decision of state department of health to "affected" parties other than the applicant for approval of tract to be used as sanitary landfill. *Pavliska v. City of Baytown* (Civ.App. 1973) 495 S.W.2d 324.

Insofar as owners of land situated in close proximity to site selected by city to serve as sanitary landfill could, under the pleadings, adduce evidence of injury within contemplation and scope of statute they could thereby bring themselves within affected class and thereby have requisite standing to prosecute an appeal from decision of state department of health. *Pavliska v. City of Baytown* (Civ.App. 1973) 495 S.W.2d 324.

3. Presumptions and burden of proof

Party appealing with respect to order granting sanitary landfill permit failed to meet its burden of showing that landfill operation was not being conducted on the site before it was incorporated into protesting city, where appellant's brief merely stated that its position was established by the testimony of five named witnesses and letter appendix to trial court brief, but there was no reference to the record where the matters asserted could be found. *City of Manvel v. Texas Dept. of Health Resources* (Civ.App. 1978) 573 S.W.2d 825, ref. n.r.e.

§ 361.322. Appeal of Administrative Order Issued Under Section 361.272; Joinder of Parties

(a) Any person subject to an administrative order under Section 361.272 may appeal the order by filing a petition before the 46th day after the date of receipt, hand delivery, or publication service of the order.

(b) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(c) The filing of a motion for rehearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) is not a prerequisite for an appeal of the order.

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(d) The person appealing the order must join the state agency issuing the administrative order as a party and may join as parties any other person named as a responsible party in the administrative order and any other person who is or may be liable for the elimination of the actual or threatened release of solid waste or hazardous substances governed by the administrative order.

(e) The filing of the petition does not prevent the state agency issuing the administrative order from proceeding with the remedial action program under Subchapter F¹ unless the court enjoins the remedial action under its general equity jurisdiction.

(f) The administrative order is final as to a nonappealing party on the 46th day after the date of receipt, hand delivery, or publication service of the order by, to, or on the nonappealing party.

(g) The district court shall uphold the administrative order if the commission proves by a preponderance of the evidence that:

(1) there is an actual or threatened release of solid waste or hazardous substances that is an imminent and substantial endangerment to the public health and safety or the environment; and

(2) the person made subject to the administrative order is liable for the elimination of the release or threatened release, in whole or in part.

(h) If the appropriateness of the selected remedial action is contested in the appeal of the administrative order, the remedial action shall be upheld unless the court determines that the remedy is arbitrary or unreasonable.

(i) A person made a party to the appeal may join as a party any other person who is or may be liable for the elimination of the release or threatened release, but the failure by a party to file an action for contribution or indemnity does not waive any right under this chapter or other law.

(j) In an appeal under this section, the district court on establishing the validity of the order shall issue an injunction requiring any person named or joined against whom liability has been established by the department or the commission or other party to comply with the order.

(k) As between parties determined to be liable under Subchapter I,² the court may, as equity requires, apportion cleanup costs in accordance with Section 361.343 and grant any other appropriate relief.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 28, eff. Sept. 6, 1990.

¹ Section 361.181 et seq.

² Section 361.271 et seq.

Revisor's Note

The source law refers to the "department of water resources." The revised law substitutes "commission" for the reason stated in the revisor's note under Section 361.021.

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Historical and Statutory Notes

The 1990 amendment, to conform to Acts 1989, 71st Leg., ch. 703, § 3 rewrote subsecs. (a) and (c) which prior thereto read:

"(a) A person filing a petition appealing an administrative order issued under Section 361.272 must join as a party the state agency issuing the administrative order and may join as a party:

"(1) any other person named in the administrative order; and

"(2) any other person who is or may be liable for the elimination of the actual or threatened release of solid waste governed by the administrative order."

"(c) The filing of the petition before the 46th day after the date of receipt, hand delivery, or publication service of the order stays the order as to the appealing party pending action by the district court. The filing of the petition does not affect other enforcement powers of the department or commission."

relettered subsecs. (d) and (e) as (f) and (g) respectively; inserted subsecs. (d) and (e); in subsec. (g) substituted "administrative order if the commission proves by a preponderance of the evidence" for "order if the department or the commission, by a preponderance of the evidence," in subd. (g)(1) inserted "or hazardous substances"; inserted subsec. (h); and relettered subsecs. (f) to (h) as (i) to (k), respectively.

Prior Laws:

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

Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.

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

Acts 1985, 69th Leg., ch. 566, § 11.

Acts 1985, 69th Leg., ch. 795, § 1.167.

Acts 1989, 71st Leg., ch. 703, § 3.

Vernon's Ann.Civ.St. art. 4477-7, § 9(a) to (g).

§ 361.323. Joinder of Parties in Action Filed by State

(a) In an action brought by the attorney general under Section 361.273 seeking an injunction to eliminate a release or threatened release, the attorney general shall, and a party may, join as a party a person reasonably believed to be liable for the release or threatened release in accordance with Section 361.272.

(b) Failure of the attorney general or a party to name or join a person as a party is not a defense to an action against that person for contribution or indemnity.

(c) In an action brought by the attorney general under Section 361.273, the district court shall grant relief on the grounds provided by Section 361.322(d), and Sections 361.322(f) and (g) apply to the action.

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

Historical and Statutory Notes

Prior Laws:

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

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

Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 795, § 1.167.

Vernon's Ann.Civ.St. art. 4477-7, § 10.

[Sections 361.324 to 361.340 reserved for expansion]

SUBCHAPTER L. COST RECOVERY

Cross References

Final administrative order, see § 361.188.

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§ 361.341. Cost Recovery by State

(a) The state is entitled to recover reasonable attorney's fees, reasonable costs to prepare and provide witnesses, and reasonable costs of investigating and assessing the facility or site if it prevails in:

- (1) an appeal of an administrative order issued under Section 361.272 or Section 361.188;
- (2) an action to enforce such an administrative order;
- (3) a civil suit seeking injunctive relief under Section 361.273; or
- (4) a cost recovery suit under Section 361.197.

(b) The court shall apportion the costs among liable parties as it determines is equitable and just.

(c) All such costs recovered by the state under Subchapter F¹ shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste disposal fee fund. All other costs recovered by the state under Sections 361.271 through 361.277 shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste generation and facility fees fund.

(d) If an appeal or third party claim is found by the court to be frivolous, unreasonable, or without foundation, the court may assess damages against the party bringing the appeal or third party claim in an amount not to exceed twice the costs incurred by the state or the third party defendant, including reasonable attorney's fees, reasonable costs of preparing and providing witnesses, and reasonable costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary for the preparation of the party's case.

Acts 1989, 71st Leg., ch. 678, § 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 28, eff. Sept. 6, 1990.

¹ Section 361.181 et seq.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.	Acts 1985, 69th Leg., ch. 795, § 1.167.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.	Acts 1987, 70th Leg., ch. 279, § 13.
Acts 1985, 69th Leg., ch. 566, § 11.	Acts 1989, 71st Leg., ch. 703, § 3.
	Vernon's Ann.Civ.St. art. 4477-7, § 9(h)(1), (2).

Library References

Health and Environment ⇐25.5(12).
WESTLAW Topic No. 199.

Law Review Commentaries

Commanding respect: Criminal sanctions
for environmental crimes. Eva M. Fromm, 21
St. Mary's L.J. 821 (1990).

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§ 361.342. Cost Recovery by Appealing or Contesting Party

If the court finds that an administrative order referred to by Section 361.341 is frivolous, unreasonable, or without foundation with respect to a party named by the order, the party appealing or contesting the order is entitled to recover from the state its reasonable:

- (1) attorney's fees;
- (2) costs to prepare and provide witnesses; and
- (3) costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary to prepare the party's case.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1977, 65th Leg., p. 2337, ch. 870, § 2.
Acts 1985, 69th Leg., ch. 566, § 11.

Acts 1985, 69th Leg., ch. 795, § 1.167.
Acts 1987, 70th Leg., ch. 279, § 13.
Vernon's Ann.Civ.St. art. 4477-7, § 9(h)(3).

§ 361.343. Apportionment of Costs

(a) Apportionment of costs for the elimination of the release or threatened release of solid waste among the persons responsible for solid waste under Section 361.271 shall be made according to:

- (1) the relationship between the parties' actions in storing, processing, and disposing of solid waste and the remedy required to eliminate the release or threatened release;
- (2) the volume of solid waste each party is responsible for at the solid waste facility or site to the extent that the costs of the remedy are based on the volume of solid waste present;
- (3) consideration of toxicity or other waste characteristics if those characteristics affect the cost to eliminate the release or threatened release; and
- (4) a party's cooperation with state agencies, its cooperation or noncooperation with the pending efforts to eliminate the release or threatened release, or a party's actions concerning storing, processing, or disposing of solid waste, as well as the degree of care that the party exercised.

(b) The apportionment of costs only adjusts the rights of parties identified by Section 361.271 and does not affect a person's liability to the state.

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

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1987, 70th Leg., ch. 279, § 14.
Vernon's Ann.Civ.St. art. 4477-7, § 11(a).

§ 361.344. Cost Recovery by Liable Party or Third Party

(a) A person subject to a court injunction or an administrative order issued under this chapter, or a third person identified by Section 361.192(c) who acts to eliminate a release or threatened release, in addition to having the right to file an action for contribution or indemnity, or both, in an appeal proceeding or in an action brought by the attorney general, may bring suit in a district court to recover costs incurred to eliminate the release or threatened release and other costs as the court, in its discretion, considers reasonable.

(b) Venue for the suit is:

(1) in the county in which the release or threatened release is or was located; or

(2) in any other county in which venue is proper under Chapter 15, Civil Practice and Remedies Code.

(c) To recover costs under this section in a proceeding that is not an appeal proceeding or an action brought by the attorney general under this subchapter, the person seeking cost recovery must have made reasonable attempts to notify the person against whom cost recovery is sought:

(1) of the existence of the release or threatened release; and

(2) that the person seeking cost recovery intended to take steps to eliminate the release or threatened release.

(d) The court shall determine the amount of cost recovery according to the criteria prescribed by Section 361.343.

(e) A fact determination or ruling by a district court in an appeal of an administrative order under Section 361.322 is not res judicata or collateral estoppel as to an issue brought in a proceeding under this section concerning a party not joined in the appeal.

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

Revisor's Note

Section 11(b) of the source law refers to "Article 1995, Revised Statutes." That statute is codified in Chapter 15, Civil Practice and Remedies Code, and the revised law reflects this change.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1987, 70th Leg., ch. 279, § 14.
Vernon's Ann.Civ.St. art. 4477-7, § 11(b), (c).

§ 361.345. Creation of Rights

Subchapter I¹ and Section 361.344 and the enforcement by the department or the commission of that subchapter and section do not:

(1) create rights or causes of action on behalf of a person other than those expressly stated by this chapter; or

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(2) change common law or a rule of decision except as limited by this chapter to actions by the department or the commission to eliminate an actual release or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment.

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

¹ Section 361.271 et seq.

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1320, ch. 405.
Acts 1985, 69th Leg., ch. 566, § 12.

Acts 1985, 69th Leg., ch. 567, § 2.
Acts 1987, 70th Leg., ch. 279, § 16.
Vernon's Ann.Civ.St. art. 4477-7, § 11b.

SUBCHAPTER M. REMOVAL AND REMEDIAL ACTION AGREEMENTS

Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 30 added Subchapter M to conform to Acts 1989, 71st Leg., ch. 703, § 6.

§ 361.401. Definitions

In this subchapter:

(1) "Disposal facility" means a site or area at which a hazardous substance, pollutant, or contaminant has been deposited, stored, disposed of, or placed or otherwise come to be located that no longer receives hazardous substances, pollutants, and contaminants.

(2) "Fund" means the hazardous waste disposal fee fund.

(3) "Petroleum" means crude oil or any fraction of crude oil that is not otherwise listed or designated as a hazardous substance under Section 361.003.

(4) "Pollutant" or "contaminant" means any element, substance, compound, or mixture, including disease-causing agents, that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(5) "Removal" means:

(A) cleaning up or removing released hazardous substances, pollutants, or contaminants from the environment;

(B) taking necessary action in the event of the threat of release of hazardous substances, pollutants, or contaminants into the environment;

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

- (D) disposing of removed material;
- (E) erecting security fencing or taking other measures to limit access;
- (F) providing alternate water supplies;
- (G) temporarily evacuating and housing threatened individuals not otherwise provided for;
- (H) taking action under Section 104(b) of the environmental response law;¹

(I) providing any emergency assistance under the Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); and

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

(6) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, pollutant, or contaminant into the environment to prevent or minimize the release of hazardous substances, pollutants, or contaminants so that they do not migrate to cause substantial danger to present or future public health and safety or the environment. The term:

(A) includes:

(i) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances, pollutants, contaminants, or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collections of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those reactions protect the public health and safety or the environment; and

(ii) the costs of permanent relocation of residents and businesses and community facilities where the president of the United States determines that alone or in combination with other measures this relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off site of hazardous substances, pollutants, or contaminants or may otherwise be necessary to protect the public health or safety; but

(B) does not include off-site transport of hazardous substances or the storage, treatment, destruction, or secure disposition off site of the hazardous substances, pollutants, contaminants, or contaminated materials unless the president of the United States determines that those actions:

(i) are more cost-effective than other remedial actions;

(ii) will create new capacity to manage, in compliance with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.), hazardous substances in addition to those located at the affected facility; or

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(iii) are necessary to protect the public health and safety or the environment from a present or potential risk that may be created by further exposure to the continued presence of those substances, pollutants, contaminants, or materials.

(7) "Response" means removal and remedial action.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 30, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, § 1.21, eff. June 7, 1991.

¹ 42 U.S.C.A. § 9601 et seq.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 703, § 6.

Vernon's Ann.Civ.St. art. 4477-7, § 15(a).

Library References

Health and Environment ~~§~~25.5(5.5).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 91, 92,
106, 109, 129 to 131.

§ 361.402. Commission Duties and Powers

(a) The commission shall:

- (1) administer this subchapter; and
- (2) cooperate with municipalities and with agencies, departments, and political subdivisions of this state and the United States and its agencies in implementing this section and the environmental response law.¹

(b) The commission may:

- (1) enter into contracts and cooperative agreements with the federal government to carry out removal and remedial action for a specific disposal facility as authorized by Section 104(c)(3) of the environmental response law or to carry out removal and remedial action with regard to a disposal facility under Section 104(d)(1) of the environmental response law;
- (2) after notice and hearing, authorize the executive director to enter into contracts and cooperative agreements on behalf of the commission under Subdivision (1) under terms and conditions stated in the commission's order; and
- (3) when acting under a cooperative agreement with the federal government under Subdivision (1), undertake the enforcement and remedial actions authorized under the environmental response law as may be reasonably necessary, in lieu of or in conjunction with actions by the federal government.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 30, eff. Sept. 6, 1990.

¹ 42 U.S.C.A. § 9601 et seq.

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Historical and Statutory Notes

Section 32 of Art. 2 of the 1990 Act provides:

"The Texas Water Commission shall investigate additional alternative programs to encourage potentially responsible parties to investigate or remediate facilities and report its findings to the 72nd Legislature with recommendations for legislative action."

Prior Laws:

Acts 1989, 71st Leg., ch. 703, § 6.

Vernon's Ann.Civ.St. art. 4477-7, § 15(b),
(c)(1) to (3).

§ 361.403. Terms and Conditions of Agreements; Costs

(a) If the commission enters into a contract or cooperative agreement under Section 104(c)(3) of the environmental response law,¹ the commission shall include in the contract or agreement terms and conditions to:

(1) assure future maintenance of the removal and remedial actions provided for the expected life of those actions as determined by the federal government;

(2) assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subchapter III of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.) for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances, pollutants, or contaminants; and

(3) assure payment by the state of:

(A) 10 percent of the costs of the remedial actions, including future maintenance; or

(B) at least 50 percent or more of the costs as determined appropriate by the federal government, taking into account the degree of responsibility of the state for any amount spent in response to a release at a disposal facility that was owned by the state at the time of disposal of hazardous substances at the disposal facility.

(b) A contract entered into with the federal government under Section 104(d)(1) of the environmental response law is subject to the same cost-sharing requirements provided for contracts in Subsection (a)(3).

(c) The state's share of reasonable response costs shall be paid from the fund.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 30, eff. Sept. 6, 1990.

¹ 42 U.S.C.A. § 9601 et seq.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 703, § 6.

Vernon's Ann.Civ.St. art. 4477-7, § 15(c)(4)
to (6).

§ 361.404. Cooperation With Federal Government

(a) Before entering into a contract or cooperative agreement under Section 361.402, the commission shall consult and work with the federal government

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in determining the response that will be necessary under the contract or cooperative agreement with regard to the particular disposal facility.

(b) The commission shall collect and shall file with the federal government any information required by the environmental response law¹ and rules adopted under that law.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 30, eff. Sept. 6, 1990.

¹ 42 U.S.C.A. § 9601 et seq.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 703, § 6.

Vernon's Ann.Civ.St. art. 4477-7, § 15(d), (e).

§ 361.405. Indemnification of Engineer or Contractor

(a) Notwithstanding any other law or rule, the commission may agree in a contract retaining an engineer or contractor to perform a program of removal, remedial action, or cleanup of a hazardous substance in connection with a contract or cooperative agreement under Section 361.402 to indemnify the engineer or contractor against any claim or liability arising from an actual or threatened release of a hazardous substance that occurs during the performance of any work, including:

(1) damages arising from economic loss, personal injury, property damages, or death;

(2) costs and expenses, including the cost of defense of a lawsuit brought against the engineer or contractor; and

(3) claims by third parties for indemnification, contribution, or damages for economic loss, personal injury, property damages, or death.

(b) In determining whether to contract to indemnify an engineer or contractor under this section, the commission shall consider the availability of insurance to the engineer or contractor for the claims and liabilities against which the commission may indemnify the engineer or contractor under this section on the date the engineer or contractor enters into a contract to perform services covered by this section. The commission may not contract to indemnify an engineer or contractor under this section if the engineer or contractor cannot demonstrate that insurance is unavailable at a reasonable cost or if another engineer or contractor submitting a comparable proposal demonstrates that insurance is available at a reasonable cost.

(c) The commission is not obligated to award a contract if it determines that adequate liability insurance is not available to an engineer or contractor and that the award of the contract is not in the public interest.

(d) The commission may not contract to indemnify an engineer or contractor under this section unless the federal government agrees in a contract or cooperative agreement to indemnify in turn the commission under Section 119 of the environmental response law.¹ The commission's decision to

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contract or not to contract to indemnify an engineer or contractor may be made as an executive act without an adjudicative public hearing and is not subject to judicial review.

(e) An engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 that results in an actual or threatened release of hazardous substance is not liable under Section 361.221, 361.223 through 361.229, or 361.252 for an act or a failure to act during the performance of the contract. This subsection does not in any way limit or otherwise affect the liability of an engineer or contractor in any other action.

(f) Subsections (a) and (e) do not apply to a grossly negligent act or omission or to wilful misconduct of an engineer or contractor during the performance of a contract. Notwithstanding any other law, an engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 is liable for a grossly negligent act or omission or for wilful misconduct that results in an actual or threatened release of a hazardous substance in violation of Subchapter G or I,² or Section 361.252, only to the extent that the act, omission, or misconduct caused the violation.

(g) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with the identification of a site containing a hazardous substance, the development of a plan of response to the site, or the supervision or performance of the response to the site.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, § 30, eff. Sept. 6, 1990.

¹ 42 U.S.C.A. § 9619.

² Section 361.221 et seq. or § 361.271 et seq.

Historical and Statutory Notes

Prior Laws:

Acts 1989, 71st Leg., ch. 703, § 6.
Vernon's Ann.Civ.St. art. 4477-7, § 15(f).

SUBCHAPTER N. RECYCLING PROGRAMS; DISPOSAL FEES

Another Subchapter N, consisting of §§ 361.431 to 361.445, and relating to waste tire recycling, was added by Acts 1991, 72nd Leg., ch. 370, § 1, eff. Sept. 1, 1991, and repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.027.

Another Subchapter N, consisting of §§ 361.431 to 361.440, and relating to pollution prevention, was added by Acts 1991, 72nd Leg., ch. 296, § 2.01 and redesignated as Subchapter Q, consisting of

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§§ 361.501 to 361.510, by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a).

Another Subchapter N, consisting of §§ 361.431 to 361.440, and relating to pollution prevention, was added by Acts 1991, 72nd Leg., ch. 590, § 1, eff. Jan. 16, 1991, and repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(b).

§ 361.421. Definitions

In this subchapter:

(1) "Compost" is the disinfected and stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(2) "Composting" means the controlled biological decomposition of organic materials through microbial activity. Depending on the specific application, composting can serve as both a volume reduction and a waste treatment measure. A beneficial organic composting activity is an appropriate waste management solution that shall divert compatible materials from the solid waste stream that cannot be recycled into higher grade uses and convert these materials into a useful product that can serve as a soil amendment or mulch.

(3) "Life-cycle cost benefit analysis" means a method of comparing the total costs of products over their lifetimes based on initial maintenance costs which include the initial cost, maintenance costs, and other related expenses.

(4) "Postconsumer waste" means a material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purpose of this subchapter, the term does not include industrial or hazardous waste.

(5) "Recyclable material" means material that has been recovered or diverted from the non-hazardous solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6) "Recycled material" means materials, goods, or products that consist of recyclable material or materials derived from postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product.

(7) "Recycled product" means a product which meets the requirements for recycled material content as prescribed by the rules established by the department described in Section 361.427.

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(8) "Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial reuse.

(9) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

(10) "Virgin material" means a raw material used in manufacturing that has not yet become a product.

(11) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.0301, eff. Aug. 12, 1991.

§ 361.422. State Recycling Goal

(a) It is the state's goal to achieve by January 1, 1994, the recycling of at least 40 percent of the state's total municipal solid waste stream.

(b) In this section, "total municipal solid waste stream" means the sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(c) By January 1, 1992, the department shall establish rules and reporting requirements through which progress toward achieving the established recycling goals can be measured. The rules may take into consideration those ongoing community recycling programs where substantial progress has already been achieved. The department may also establish a limit on the amount of credit that may be given to certain high-volume materials in measuring recycling progress.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.423. Market Development Study and Implementation Program

(a) The General Land Office, in cooperation with the department, the Texas Water Commission, the Railroad Commission of Texas, and the Texas Department of Commerce, shall initiate, coordinate, and conduct a comprehensive

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market development study that quantifies the potential benefits and costs of recycling in order to provide the groundwork for an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The study shall:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze the market development implications of:

(A) the state's waste management policies and regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, scrap gypsum, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

(H) the state recycling goal;

(I) public-private partnerships;

(J) research and development;

(K) government procurement policies;

(L) educational programs for the public, corporate and regulated communities, and government entities; and

(M) public health and safety regulatory policies; and

(4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas.

(c) In preparing the study, the responsible agencies may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar institutions.

(d) The General Land Office shall develop and carry out a program designed to implement the comprehensive statewide strategy established pursuant to Subsection (b)(4).

Text of Subsec. (e) effective until Jan. 16, 1993.

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(e) The initial study required by this section shall be submitted to the 73rd Legislature not later than January 15, 1993. This subsection expires January 16, 1993.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Cross References

Newspaper publishers, participation in market development study, see § 361.430.

§ 361.424. Recycling Awareness Campaign

In order to raise public awareness and involvement in recycling and to increase markets for recycled products, the General Land Office shall develop and implement a statewide promotional campaign which includes:

- (1) public service announcements on radio and television;
- (2) a statewide information network to inform the public of recycling opportunities in their region of the state; and
- (3) efforts to encourage business, industry, and government to purchase recycled products.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.425. Governmental Entity Recycling

(a) A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district shall:

- (1) in cooperation with the State Purchasing and General Services Commission or the department establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, high-grade office paper, and corrugated cardboard;
- (2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;
- (3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and
- (4) establish educational and incentive programs to encourage maximum employee participation.

(b) The department by order shall exempt a school district or a city with a population of less than 5,000 from compliance with this section if the department finds that compliance would work a hardship on the district or the city. The department shall adopt rules for administering this subsection.

Text of Subsec. (c) effective until Sept. 2, 1993.

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(c) State agencies shall comply with this section not later than September 1, 1991. Other entities listed in Subsection (a) shall comply not later than September 1, 1993. This subsection expires September 2, 1993.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.426. Governmental Entity Preference for Recycled Products

(a) A state agency, state court, or judicial agency not subject to the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), a county, municipality, school district, junior or community college district, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality.

(b) An entity subject to this section regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

(1) eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;

(2) encourage the use of products made of recycled materials; and

(3) ensure to the maximum extent economically feasible that the entity purchases products that may be recycled when they have served their intended use.

(c) In developing new procedures and specifications, the entity shall encourage the use of recycled products and products that may be recycled or reused.

(d) The department by order shall exempt a school district or a city with a population of less than 5,000 from compliance with this section if the department finds that compliance would work a hardship on the district or the city. The department shall adopt rules for administering this subsection.

Text of Subsec. (e) effective until Sept. 2, 1993.

(e) State agencies shall comply with this section not later than September 1, 1991. Other entities listed in Subsection (a) shall comply not later than September 1, 1993. This subsection expires September 2, 1993.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.427. Specifications for Recycled Products

(a) The department, in consultation with the State Purchasing and General Services Commission, shall promulgate rules to establish guidelines which specify the percent of the total content of a product which must consist of recycled material for the product to be a "recycled product."

(b) The guidelines established under this section shall specify a minimum percent of the recycled material in a product which must be postconsumer waste.

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(c) The guidelines established under this section shall be classified by types of products.

(d) The department's guidelines shall be established taking into consideration the guidelines promulgated by the Environmental Protection Agency for federal procurement of recycled products as authorized by the Solid Waste Disposal Act (42 U.S.C. Section 3259 et seq.).¹

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

¹ Transferred or repealed; see § 6987.

Cross References

"Recycled newsprint", defined, see § 361.430.

"Recycled product", defined, see § 361.421.

§ 361.428. Composting Program

(a) The Municipal Solid Waste Management and Resource Recovery Advisory Council of the department shall develop recommendations for the 73rd Legislature regarding the development of a state composting program. In developing these recommendations, the council shall, at a minimum, consider:

- (1) the development of local yard waste separation programs;
- (2) the commercial application of composting activities;
- (3) the potential beneficial uses of compost; and
- (4) the necessary changes to existing law and regulations required to facilitate conversion of yard waste to compost.

(b) The department shall put in place a composting program that is capable of achieving at least a 15 percent reduction in the amount of the municipal solid waste stream that is disposed of in landfills by January 1, 1994.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.429. Household Hazardous Waste

The department shall develop standards for household hazardous waste diversion programs such as collection facilities or waste collection days for cities, counties, or regions. The department's waste management financial assistance program described in Section 363.092 shall be expanded to include matching grants for costs of planning and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.430. Newsprint Recycling Program

(a) It is the policy of this state that recycling of all paper products including old newspapers is vital to our economy and the preservation of our environment. It is the purpose of this section to promote the state's policy by encouraging newspaper publishers to promote recycling through purchase of

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recycled products and by cooperating with local community organizations to establish and promote community collection efforts for all paper products.

(b)(1) In order to observe and promote this policy the newspaper publishers of Texas will work with state officials and state agencies to identify potential sites and offer economic incentives in order to attract additional de-inking facilities and recycled newsprint mills to Texas.

(2) The newspaper publishers of Texas will also assist and participate in the market development study and implementation program established by Section 361.423.

(c) The department shall promulgate rules and regulations which establish a newsprint recycling program for the state.

(d) The program shall include guidelines which set goals for the use of recycled newsprint by newspaper publishers, using the following target percentages of recycled newsprint in the total newsprint consumption of each newspaper publisher:

- (1) 10 percent by the end of the calendar year 1993;
- (2) 20 percent by the end of the calendar year 1997; and
- (3) 30 percent by the end of the calendar year 2000.

(e) Smaller newspapers may find it difficult to implement use of recycled newsprint. Therefore, larger newspapers will be responsible for the necessary consumption to allow the percentages specified in Subsection (d) to represent total consumption of recycled newsprint by all Texas newspapers.

(f) In this section:

(1) "Newspaper" means a publication that is sold and that is printed on newsprint and published, printed, and distributed in the state, both daily and non-daily, to disseminate current news and information of general interest to the public.

(2) "Recycled newsprint" means newsprint which meets the specified guidelines under Section 361.427 to be classified as a recycled product.

(g)(1) Publishers of newspapers subject to regulation under the newsprint recycling program shall submit annually, on or before January 31, a report to the commissioner which states the percentage of recycled newsprint used by the publisher in the preceding year, and, if the target percentage is not met, the publisher must include in the report:

(A) whether the publisher is able to obtain sufficient quantities of recycled newsprint at competitive prices and of satisfactory quality;

(B) whether the publisher has attempted to obtain recycled newsprint from every producer of recycled newsprint that offered to sell recycled newsprint to the publisher during the preceding calendar year; and

(C) the publisher's efforts to obtain recycled newsprint, including the name and address of each producer of recycled newsprint that the publisher contacted and the name and telephone number of the contact person at each of the producers.

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(2) The commissioner shall develop forms for and regulations governing the submission of the reports required by this subsection.

(h) If the commissioner determines that newspaper publishers are not voluntarily meeting the target percentages prescribed by this section for the program, the department may adopt mandatory enforcement measures.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 23 of Acts 1991, 72nd Leg., ch. 303, eff. Sept. 1, 1991, as amended by § 1.0261 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, eff. Aug. 26, 1991, provides:

"(a) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules required to administer Subchapter P, Chapter 361, Health and Safety Code, as added by this Act. Section 361.430, Health and Safety Code, applies only to newsprint purchased on or after January 1, 1992. The fees imposed by Section 361.472, Health and Safety Code, as added by this Act, apply only to a new tire sold on or after January 1, 1992. The payments authorized by Section 361.477, Health and Safety Code, as added by this Act, apply only to tires collected and shredded on or after April 1, 1992. The change in law made to Subsection (f), Section 361.112, Health and Safety Code, by this Act, applies only to a person who temporarily stores scrap tires on or after April 1, 1992.

"(b) Not later than January 1, 1992, the Railroad Commission of Texas shall adopt the rates required by Section 361.431, Health and Safety Code, as added by this Act.

"(c) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by Chapter 371, Health and Safety Code, as added by this Act.

"(d) The change in law made by Subsection (k), Section 361.112, Health and Safety Code, as added by this Act, applies to an application for registration or a permit under Section

361.112 that is pending on, or submitted to the Texas Department of Health on or after January 1, 1992. A facility required to present evidence of financial responsibility under Section 361.479, Health and Safety Code, as added by this Act, that is registered or permitted under Section 361.112, Health and Safety Code, on January 1, 1992, shall comply with Section 361.479 not later than March 1, 1992.

"(e) Subsection (c), Article 6674i-1, Revised Statutes, and Sections 3.211 and 3.212, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended or added by this Act, apply only to bids submitted on or after the effective date of this Act to the State Department of Highways and Public Transportation or to the State Purchasing and General Services Commission. A bid submitted before that date is governed by the law in effect at the time the bid was submitted, and the former law is continued in effect for that purpose.

"(f) The requirements of Article 6674i-2, Revised Statutes, as added by this Act, relating to recycled asphalt pavement do not affect a contract existing between the State Department of Highways and Public Transportation and another person, partnership, corporation, or government entity on the effective date of this Act.

"(g) Nothing in this Act shall influence or require a preference for one type of pavement design over another.

"(h) The prohibition on charging a tire collection fee under Section 361.480, Health and Safety Code, as added by this Act, applies only to tires collected on or after April 1, 1992."

§ 361.431. Intrastate Transportation of Recyclable Materials

(a) The Railroad Commission of Texas shall set maximum intrastate rates for motor carriers transporting recyclable materials and shall set such maximum rates at a level which is comparable to interstate rates for transportation of recyclable materials which are assessed by interstate motor carriers providing the same kind, class, and quality of service. Evidence of interstate services and interstate rates shall be presented at any rate proceeding before

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the railroad commission relating to recyclable materials in accordance with the railroad commission's applicable rules of procedure and evidence, as well as in accordance with the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The railroad commission shall issue limited common carrier certificates, limited specialized motor carrier certificates, or contract carrier permits to those persons who desire to engage in the business of transporting recyclable materials for hire over the highways of this state. The railroad commission shall adopt simplified rules for the granting of such limited certificates or permits of recyclable materials for hire within 120 days of the effective date of this section. Such rules shall provide for the issuance of such permits on the showing of fitness, public necessity, and the ability to meet requisite safety standards by the applicant. In considering the issue of public necessity, the railroad commission shall consider that efficient transportation of recyclable materials is essential to development of an effective statewide recycling program.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 23 of Acts 1991, 72nd Leg., ch. 303, eff. Sept. 1, 1991, as amended by § 1.0261 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, eff. Aug. 26, 1991, provides:

"(a) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules required to administer Subchapter P, Chapter 361, Health and Safety Code, as added by this Act. Section 361.430, Health and Safety Code, applies only to newsprint purchased on or after January 1, 1992. The fees imposed by Section 361.472, Health and Safety Code, as added by this Act, apply only to a new tire sold on or after January 1, 1992. The payments authorized by Section 361.477, Health and Safety Code, as added by this Act, apply only to tires collected and shredded on or after April 1, 1992. The change in law made to Subsection (f), Section 361.112, Health and Safety Code, by this Act, applies only to a person who temporarily stores scrap tires on or after April 1, 1992.

"(b) Not later than January 1, 1992, the Railroad Commission of Texas shall adopt the rates required by Section 361.431, Health and Safety Code, as added by this Act.

"(c) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by Chapter 371, Health and Safety Code, as added by this Act.

"(d) The change in law made by Subsection (k), Section 361.112, Health and Safety Code,

as added by this Act, applies to an application for registration or a permit under Section 361.112 that is pending on, or submitted to the Texas Department of Health on or after January 1, 1992. A facility required to present evidence of financial responsibility under Section 361.479, Health and Safety Code, as added by this Act, that is registered or permitted under Section 361.112, Health and Safety Code, on January 1, 1992, shall comply with Section 361.479 not later than March 1, 1992.

"(e) Subsection (c), Article 6674i-1, Revised Statutes, and Sections 3.211 and 3.212, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended or added by this Act apply only to bids submitted on or after the effective date of this Act to the State Department of Highways and Public Transportation or to the State Purchasing and General Services Commission. A bid submitted before that date is governed by the law in effect at the time the bid was submitted, and the former law is continued in effect for that purpose.

"(f) The requirements of Article 6674i-2, Revised Statutes, as added by this Act, relating to recycled asphalt pavement do not affect a contract existing between the State Department of Highways and Public Transportation and another person, partnership, corporation, or government entity on the effective date of this Act.

"(g) Nothing in this Act shall influence or require a preference for one type of pavement design over another.

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"(h) The prohibition on charging a tire collection fee under Section 361.480, Health and Safety Code, as added by this Act, applies only to tires collected on or after April 1, 1992."

[Sections 361.432 to 361.450 reserved for expansion]

SUBCHAPTER O. LEAD-ACID BATTERIES

§ 361.451. Land Disposal Prohibited

(a) No person may place a used lead-acid battery in mixed municipal solid waste nor discard or otherwise dispose of a lead-acid battery except by delivery to:

- (1) a battery retailer or wholesaler;
- (2) a secondary lead smelter; or
- (3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(b) No battery retailer shall dispose of a used lead-acid battery except by delivery to:

- (1) a battery wholesaler or a secondary lead smelter, or an agent thereof;
- (2) a battery manufacturer for delivery to a secondary lead smelter; or
- (3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(c) A person commits an offense if the person knowingly or intentionally disposes of a lead-acid battery other than as provided in this section.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.452. Collection for Recycling

A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in this state shall:

- (1) accept from customers, if offered, at the point of transfer, used lead-acid batteries of the type and in a quantity at least equal to the number of new batteries purchased; and
- (2) post written notice, which must be at least 8½ inches by 11 inches in size, containing the universal recycling symbol and the following language:
 - (A) "It is illegal to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery.";
 - (B) "Recycle your used batteries."; and
 - (C) "State law requires us to accept used motor-vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased."

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.453**SANITATION AND ENVIRONMENTAL QUALITY
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The department shall produce, print, and distribute the notices required by Section 361.452 to all places where lead-acid batteries are offered for sale at retail. In performing its duties under this section the department may inspect any place, building, or premises governed by Section 361.452. Authorized employees of the department may issue warnings and citations to persons who fail to comply with the requirements of Section 361.452. Failure to post the required notice within three days following warning shall subject the establishment to a fine of \$100 per day.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.454. Lead-Acid Battery Wholesalers

Any person selling new lead-acid batteries at wholesale shall accept from customers, at the point of transfer, used lead-acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers. A person accepting batteries in transfer from a battery retailer shall remove batteries from the retail point of collection within 90 days after acceptance.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

§ 361.455. Penalty

Any violation of this subchapter is a Class C misdemeanor. Each battery improperly disposed of constitutes a separate violation and offense.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Cross References

Punishment, Class C misdemeanor, see V.T.C.A. Penal Code, § 12.23.

§ 361.456. Enforcement

The department shall adopt rules necessary to enforce the provisions of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

[Sections 361.457 to 361.470 reserved for expansion]

SUBCHAPTER P. WASTE TIRE RECYCLING PROGRAM**§ 361.471. Definitions**

In this subchapter:

- (1) "Fund" means the waste tire recycling fund.
- (2) "Mobile tire shredder" means equipment mounted on wheels or skid-mounted and hauled from place to place to split, shred, or quarter used or scrap tires.

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- (3) "Scrap tire" has the meaning assigned by Section 361.112.
- (4) "Waste tire facility" means a facility permitted by the department under Section 361.112 at which scrap tires are collected or deposited and shredded to facilitate the future extraction of useful materials for recycling, reuse, or energy recovery.
- (5) "Waste tire processor" means:
 - (A) a waste tire facility; or
 - (B) a mobile tire shredder that splits, shreds, or quarters tires and deposits the split, shredded, or quartered tires for eventual recycling, reuse, or energy recovery at:
 - (i) a waste tire storage facility registered by the department under Section 361.112; or
 - (ii) a waste tire facility.
- (6) "Waste tire transporter" means a person who collects and transports used or scrap tires for storage or disposal.
- (7) "Weighed tire" means a unit of weight for shredded scrap tires that is equal to 18.7 pounds.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 23 of Acts 1991, 72nd Leg., ch. 303, eff. Sept. 1, 1991, as amended by § 1.0261 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, eff. Aug. 26, 1991, provides:

"(a) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules required to administer Subchapter P, Chapter 361, Health and Safety Code, as added by this Act. Section 361.430, Health and Safety Code, applies only to newsprint purchased on or after January 1, 1992. The fees imposed by Section 361.472, Health and Safety Code, as added by this Act, apply only to a new tire sold on or after January 1, 1992. The payments authorized by Section 361.477, Health and Safety Code, as added by this Act, apply only to tires collected and shredded on or after April 1, 1992. The change in law made to Subsection (f), Section 361.112, Health and Safety Code, by this Act, applies only to a person who temporarily stores scrap tires on or after April 1, 1992.

"(b) Not later than January 1, 1992, the Railroad Commission of Texas shall adopt the rates required by Section 361.431, Health and Safety Code, as added by this Act.

"(c) Not later than January 1, 1992, the Texas Board of Health and the comptroller of public accounts shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by

Chapter 371, Health and Safety Code, as added by this Act.

"(d) The change in law made by Subsection (k), Section 361.112, Health and Safety Code, as added by this Act, applies to an application for registration or a permit under Section 361.112 that is pending on, or submitted to the Texas Department of Health on or after January 1, 1992. A facility required to present evidence of financial responsibility under Section 361.479, Health and Safety Code, as added by this Act, that is registered or permitted under Section 361.112, Health and Safety Code, on January 1, 1992, shall comply with Section 361.479 not later than March 1, 1992.

"(e) Subsection (c), Article 6674i-1, Revised Statutes, and Sections 3.211 and 3.212, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended or added by this Act, apply only to bids submitted on or after the effective date of this Act to the State Department of Highways and Public Transportation or to the State Purchasing and General Services Commission. A bid submitted before that date is governed by the law in effect at the time the bid was submitted, and the former law is continued in effect for that purpose.

"(f) The requirements of Article 6674i-2, Revised Statutes, as added by this Act, relating to

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recycled asphalt pavement do not affect a contract existing between the State Department of Highways and Public Transportation and another person, partnership, corporation, or government entity on the effective date of this Act.

"(g) Nothing in this Act shall influence or require a preference for one type of pavement design over another.

"(h) The prohibition on charging a tire collection fee under Section 361.480, Health and Safety Code, as added by this Act, applies only to tires collected on or after April 1, 1992."

§ 361.472. Waste Tire Recycling Fees

(a) A wholesale or retail tire dealer who sells or offers to sell new tires not for resale shall collect at the time and place of sale a waste tire recycling fee of \$2 for each new automobile, van, bus, truck, trailer, semitrailer, truck tractor and semitrailer combination, or recreational vehicle tire sold that has a rim diameter equal to or greater than 12 inches but less than 26 inches.

(b) A dealer required to collect a fee under this section may retain 2½ cents from each fee the dealer collects. A dealer shall account for amounts retained under this subsection in the manner prescribed by the comptroller.

(c) A dealer required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (d), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(d) A person required to collect a fee under this section who collects less than \$50 for a calendar month or less than \$150 for a calendar quarter is not required to file a monthly report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day of the month following the end of the calendar quarter.

(e) An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be open for inspection by the comptroller at all reasonable times.

(f) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.026, eff. Aug. 12, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

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§ 361.473. Enforcement; Penalties

(a) A person who does not file a report as provided by Section 361.472 or who possesses a fee collected or payable under that section and who does not remit the fee to the comptroller at the time and in the manner required by that section and rules of the comptroller shall pay a penalty of five percent of the amount of the fee due and payable. If the person does not file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(b) Chapters 101 and 111 through 113, Tax Code, and Sections 153.006 and 153.007, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters and sections apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(c) The comptroller may add a penalty of 75 percent of the amount of the fee, penalty, and interest due if failure to file the report or pay the fee when it comes due is attributable to fraud or an intent to evade the application of this section or a rule made under this section or Chapter 111, Tax Code.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.474. Disposition of Fees and Penalties

Fees and penalties collected under this subchapter shall be deposited in the state treasury to the credit of the waste tire recycling fund.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.475. Waste Tire Recycling Fund

(a) The waste tire recycling fund is a special account in the general revenue fund.

(b) The department shall administer the fund.

(c) The fund consists of fees and penalties collected under this subchapter, interest on money in the fund, and money from gifts, grants, or any other source intended to be used for the purposes of this subchapter.

(d) The fund may be used only to pay:

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(1) waste tire processors that meet the requirements for payment under Section 361.477 and rules adopted under that section;

(2) the department's reasonable and necessary administrative costs of performing its duties under this subchapter in an amount not to exceed six percent of the money annually accruing to the fund; and

(3) the comptroller's reasonable and necessary administrative costs of performing the comptroller's duties under this subchapter in an amount not to exceed two percent of the money annually accruing to the fund.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.476. Priority Enforcement List

The department shall identify unauthorized tire dumps that present an existing or potential threat to public health and safety or to the environment and shall prepare an enforcement list of those dumps, giving priority to dumps for which a responsible party cannot be located.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.477. Payments to Waste Tire Processors

(a) The department each month shall pay a waste tire processor that shreds scrap tires and meets the requirements of this section and rules adopted under this section an amount equal to 85 cents for each weighed tire shredded by the processor during the preceding calendar month.

(b) A waste tire processor that desires to receive payment under this section for tires shredded by the processor during a calendar month must:

(1) apply to the department in accordance with forms prescribed by the department;

(2) demonstrate as required by rules adopted under this section that:

(A) all tires for which payment is sought have been shredded to a particle size not larger than nine square inches; and

(B) not less than 25 percent of those tires were collected from tire dumps listed on the department's priority enforcement list;

(3) provide any other information the department determines is necessary to accomplish the purposes of this subchapter; and

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(4) demonstrate that energy recovery activities are in compliance with applicable air emission control rules and standards as adopted by the Texas Air Control Board.

(c) A waste tire processor that in any month exceeds the 25 percent minimum requirement of Subsection (b)(2) shall receive a credit for the amount in excess of 25 percent that may be used to meet the minimum requirement during a later month. The board of health by rule may prescribe the method of applying credits accrued under this subsection.

(d) The board of health by rule shall adopt application and payment procedures and requirements to implement this section.

(e) A permitted Type VIII tire monofill approved under board of health rules may qualify as a waste tire processor and is eligible to receive payment under this section if the Type VIII tire monofill complies with all the provisions of this subchapter and rules of the board of health.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.0262, eff. Aug. 12, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

Cross References

Prohibition on disposal of shredded tires in landfill, see § 361.482.
Prohibition on out-of-state tires, see § 361.481.

§ 361.478. Evaluation of Recycling and Energy Recovery Activities; Certification for Payment

(a) Beginning June 1, 1995, and every five years after that date, the department shall evaluate according to standards adopted by board of health rule the recycling and energy recovery activities of each waste tire processor that received payment under Section 361.477 during the preceding five years.

(b) After evaluation, the department shall certify as eligible for payment under Section 361.477 during the next five years a waste tire processor that has conducted or provided for recycling of or energy recovery from tires for which the processor received payment during the preceding five years.

(c) A waste tire processor that receives payment under Section 361.477 during any five-year period and that after evaluation is not certified by the department under Subsection (b) as eligible for payment under Section 361.477 may not receive payment under that section for the next five years.

(d) The board of health by rule may establish a procedure by which a waste tire processor can reestablish eligibility for payment under Section 361.477.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

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For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.479. Evidence of Financial Responsibility

(a) A waste tire storage facility registered by the department under Section 361.112 or a waste tire facility that accepts shredded tires for storage or for processing for recycling, reuse, or energy recovery shall submit to the department evidence of financial responsibility in an amount adequate to assure proper cleanup or closure of the facility.

(b) A facility subject to Subsection (a) shall submit to the department an estimate of the total amount of shredded tires measured by weighed tire that the facility will store or process and the estimated cost, using that total amount, of cleaning up or closing the facility.

(c) The department shall evaluate and may amend an estimate submitted under Subsection (b) and by order shall determine for each facility the amount for which evidence of financial responsibility is required.

(d) Evidence of financial responsibility may be in the form of a performance bond, a letter of credit from a recognized financial institution, a trust fund, or insurance for a privately owned facility, or a resolution by the commissioners court or the city council, as appropriate, for a publicly owned facility.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.480. Tire Collection Fee Prohibited

A waste tire transporter or mobile tire shredder may not charge a fee to a wholesale or retail dealer for collecting for delivery to a waste tire facility or for collecting and shredding used or scrap tires accepted for temporary storage by the dealer from purchasers of new tires.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

SOLID WASTE DISPOSAL ACT**§ 361.484****Ch. 361****§ 361.481. Prohibition on Out-of-State Tires**

A waste tire processor may not claim payment under Section 361.477 for shredding out-of-state tires.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.482. Prohibition on Disposal of Shredded Tires in Landfill

A waste tire processor may not dispose of shredded tires in a landfill if the processor has received payment under Section 361.477 for the tires.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.483. Civil Penalty

(a) A person who violates Section 361.481 or 361.482 is liable for a civil penalty of up to \$10,000 for each violation.

(b) The attorney general or the prosecuting attorney in the county in which the alleged violation occurs may bring suit to recover the civil penalty imposed under Subsection (a).

(c) A penalty collected under this section shall be deposited to the credit of the waste tire recycling fund.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.484. Rules

The board of health may adopt rules reasonably necessary to implement this subchapter.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

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For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

§ 361.485. Report

Not later than February 1 of each odd-numbered year, the department shall report to the governor and the legislature on the administration of the program established under this subchapter and its effectiveness in cleaning up existing tire dumps and in preventing new dumps.

Added by Acts 1991, 72nd Leg., ch. 303, § 1, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules to administer this subchapter, see Historical and Statutory Note following § 361.471.

[Sections 361.486 to 361.500 reserved for expansion]

SUBCHAPTER Q. POLLUTION PREVENTION**§ 361.501. Definitions**

In this subchapter:

(1) "Acute hazardous waste" means hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 C.F.R. Section 261.11(a)(2).

(2) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.029, eff. Aug. 12, 1991.

(3) "Conditionally exempt small-quantity generator" means a generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(4) "Committee" means the waste reduction advisory committee established by Section 361.0215.

(5) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(6) "Facility" means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

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(7) "Generator" and "generator of hazardous waste" have the meaning assigned by Section 361.131.

(8) "Large-quantity generator" means a generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

(9) "Media" and "medium" mean air, water, and land into which waste is emitted, released, discharged, or disposed.

(10) "Pollutant" or "contaminant" includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Sections 101(14)(A) through (F) of the environmental response law,¹ nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) "Source reduction" has the meaning assigned by the federal Pollution Prevention Act of 1990, Pub.L. 101-508, Section 6603, 104 Stat. 1388.²

(12) "Waste minimization" means a practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.431 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.029, eff. Aug. 12, 1991.

¹42 U.S.C.A. § 9601 et seq.

²42 U.S.C.A. § 13101 et seq.

Historical and Statutory Notes

Section 2.09 of Acts 1991, 72nd Leg., ch. 296 provides:

"If either S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and is approved by the governor, the duties, powers, and responsibilities conferred by this article on the Texas Water Commission or the Texas Air Control Board are transferred to the Texas Department of Natural Resources."

Neither S.B. No. 35 nor H.B. No. 2000 was passed and approved by the governor.

Section 3.01 of Acts 1991, 72nd Leg., ch. 296 provides:

"This Act may be referred to as the Waste Reduction Policy Act of 1991."

Section 1.028(a) of Acts 1991, 72nd Leg., 1st C.S., ch. 3, provides:

"Subchapter N, Chapter 361, Health and Safety Code, as added by S.B. No. 1099, Acts of the 72nd Legislature, Regular Session, 1991, is relettered as Subchapter Q, Health and Safety Code, and Sections 361.431-361.440, Health and Safety Code, as added by that Act are renumbered as Sections 361.501-361.510, Health and Safety Code, and appropriate cross-references are changed."

§ 361.502**SANITATION AND ENVIRONMENTAL QUALITY
Title 5****§ 361.502. Policy and Goals for Source Reduction and Waste Minimization**

(a) It is the policy of the state to reduce pollution at its source and to minimize the impact of pollution in order to reduce risk to public health and the environment and continue to enhance the quality of air, land, and waters of the state where feasible.

(b) Source reduction is the primary goal of the state in implementing this policy because hazardous wastes, pollutants, and contaminants that are not generated or produced pose no threat to the environment and eliminate societal management and disposal costs.

(c) To further promote this policy, hazardous wastes, pollutants, and contaminants that cannot be reduced at the source should be minimized wherever possible. Waste minimization, while secondary in preference to source reduction, is an important means for achieving more effective protection of public health and the environment while moving toward source reduction.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.432 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991.

§ 361.503. Agency Plans

(a) Consistent with state and federal regulations, to achieve the policies stated in Section 361.502, the board by rule shall, to the maximum extent that is technologically and economically feasible, develop plans to reduce the release of pollutants or contaminants into the air.

(b) Consistent with state and federal regulations, to achieve the policies stated in Section 361.502, to the maximum extent that is technologically and economically feasible, the commission shall:

(1) develop plans to reduce the release of pollutants or contaminants into water; and

(2) establish reasonable goals for the reduction of the volume of hazardous waste generated in the state and the amount of pollutants and contaminants using source reduction and waste minimization.

(c) In order to effectively use resources and avoid duplication of effort, the commission and board by joint rule shall develop a common list of pollutants or contaminants and the level of releases of those pollutants or contaminants subject to source reduction and waste minimization planning.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.433 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991.

§ 361.504. Application

(a) Except as provided by Subsection (b), this subchapter applies to the following persons:

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- (1) all large-quantity generators of hazardous waste;
- (2) all generators other than large-quantity generators and conditionally exempt small-quantity generators; and
- (3) persons subject to Section 313, Title III, Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 11023) whose releases exceed the levels established under Section 361.503(c).

(b) The commission and the board through joint rule making shall establish one or more schedules for the application of the requirements of this subchapter to designated classes of persons described by Subsection (a). The schedule shall provide for the inclusion of all persons described by Subsection (a) on a date to be determined by the commission and board, and until that date this subchapter applies only to those persons designated by rule of the commission or board.

(c) This subchapter does not apply to a facility regulated by the Railroad Commission of Texas under Section 91.101 or 141.012, Natural Resources Code.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.434 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991.

Historical and Statutory Notes

Section 2.10 of Acts 1991, 72nd Leg., ch. 296 provides:

"If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in imple-

menting the application procedures required under this article, the appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency."

§ 361.505. Source Reduction and Waste Minimization Plans

(a) Persons identified under Section 361.504(a)(1) or (a)(3) shall prepare a source reduction and waste minimization plan. Plans developed under this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities. The plan shall include, at a minimum:

- (1) an initial survey that identifies:
 - (A) for facilities subject to Section 361.504(a)(1), activities that generate hazardous waste; and
 - (B) for facilities subject to Section 361.504(a)(3), activities that result in the release of pollutants or contaminants designated under Section 361.503(c);¹
- (2) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;
- (3) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

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- (4) an estimate of the type and amount of reduction anticipated;
 - (5) a schedule for the implementation of each source reduction and waste minimization project;
 - (6) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;
 - (7) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;
 - (8) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;
 - (9) an executive summary of the plan; and
 - (10) identification of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium.
- (b) The source reduction and waste minimization plan may include:
- (1) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;
 - (2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;
 - (3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;
 - (4) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and
 - (5) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.
- (c) The commission shall adopt rules for the development of simplified, as appropriate, source reduction and waste minimization plans and reports for persons identified under Section 361.504(a)(2).
- (d) The commission and the board shall provide information to aid in the preparation of source reduction and waste minimization plans to be prepared by a person under this section.
- (e) The commission and board shall enter into memoranda of understanding as necessary to ensure that a person may meet both agencies' requirements in a single plan.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.435 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991.

¹ Renumbered as § 361.503 by Acts 1991, 72nd Leg., 1st C.S., Ch. 3, § 1.028(a).

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Historical and Statutory Notes

Section 2.07 of Acts 1991, 72nd Leg., ch. 296 provides:

"Not later than January 1, 1992, the Texas Water Commission and the Texas Air Control Board by joint rule shall adopt requirements

for source reduction and waste minimization plans required by Section 361.435, Health and Safety Code, as added by this article, and shall adopt the schedules under Subsection (b), Section 361.434, Health and Safety Code, as added by this article."

§ 361.506. Source Reduction and Waste Minimization Annual Report

(a) A person required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission and the board an annual report and a current executive summary according to any schedule developed under Section 361.504.

(b) The annual report shall comply with rules adopted by the commission and the board through joint rule making. The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(1) an assessment of the progress toward the achievement of the facility source reduction goal and the facility waste minimization goal;

(2) a statement to include, for facilities subject to Section 361.504(a)(1), the amount of hazardous waste generated and, for facilities subject to Section 361.504(a)(3), the amount of the release of pollutants or contaminants designated under Section 361.503(c) in the year preceding the report, and a comparison of those amounts with the amounts generated or released in a base year selected by agreement of the commission and the board; and

(3) any modification to the plan.

(c) The annual report may include:

(1) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(4) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(d) The annual report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.436 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991.

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Historical and Statutory Notes

Section 2.08 of Acts 1991, 72nd Leg., ch. 296, provides:

"Rules adopted by the Texas Water Commission or the Texas Air Control Board shall provide that the initial source reduction and waste minimization annual report required to be submitted by an identified class of persons under Section 361.436, Health and Safety Code, as

added by this article, shall be submitted not later than a date certain, which may not be earlier than 18 months from the date a schedule is adopted under Subsection (b), Section 361.434, Health and Safety Code, as added by this article, that identifies the class of persons as subject to the requirements of Subchapter N, Chapter 361, Health and Safety Code, as added by this article."

§ 361.507. Administrative Completeness

(a) The commission or the board may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter and rules adopted under Section 361.504, 361.505, or 361.506, as appropriate.

(b) Failure to have a source reduction and waste minimization plan in accordance with Sections 361.504 and 361.505 or failure to submit a source reduction and waste minimization annual report in accordance with Section 361.506 is a violation of this chapter.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.437 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991.

§ 361.508. Confidentiality

(a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person who is subject to this subchapter and shall be available to commission or board personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) The executive summary and the annual report are public records. On request, the person shall make available to the public a copy of the executive summary or annual report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the commission or board that an executive summary, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the commission or board shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the commission or board or an employee of the commission or board does not affect its status as a trade secret.

(e) Information classified by the commission or board as confidential under this section is not a public record for purposes of the open records law,

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Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be used in a public hearing or disclosed to a person outside the commission or board unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.438 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991.

§ 361.509. Source Reduction and Waste Minimization Assistance

(a) The office of pollution prevention established under Section 361.0216 shall assist generators of hazardous waste and owners or operators of facilities that release pollutants or contaminants in reducing the volume, toxicity, and adverse public health and environmental effects of hazardous waste generated or pollutants or contaminants released in the state. To provide the assistance, the office may:

(1) compile, organize, and make available for distribution information on source reduction and waste minimization technologies and procedures;

(2) compile and make available for distribution to business and industry a list of consultants on source reduction and waste minimization technologies and procedures and a list of researchers at state universities who can assist in source reduction and waste minimization activities;

(3) sponsor and conduct conferences and individualized workshops on source reduction and waste minimization for specific classes of business or industry;

(4) facilitate and promote the transfer of source reduction and waste minimization technologies and procedures among businesses and industries;

(5) if appropriate, develop and distribute model source reduction and waste minimization plans for the major classes of business or industry, as identified by the office, that generate and subsequently treat, store, or dispose of hazardous waste or that release a pollutant or contaminant in the state;

(6) develop and make available for distribution recommended source reduction and waste minimization audit procedures for use by business or industry in conducting internal source reduction and waste minimization audits;

(7) provide to business and industry, as resources allow, on-site assistance in identifying potential source reduction and waste minimization techniques and practices and in conducting internal source reduction and waste minimization audits;

(8) compile and make available for distribution information on tax benefits available to business or industry for implementing source reduction and waste minimization technologies and practices;

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(9) establish procedures for setting priorities among key industries and businesses for receiving assistance from the office;

(10) develop the information base and data collection programs necessary to set program priorities and to evaluate progress in source reduction and waste minimization;

(11) develop training programs and materials for state and local regulatory personnel and private business and industry regarding the nature and applicability of source reduction and waste minimization practices;

(12) produce a biennial report on source reduction and waste minimization activities, achievements, problems, and goals, including a biennial work plan;

(13) participate in existing state, federal, and industrial networks of individuals and groups involved in source reduction and waste minimization; and

(14) publicize to business and industry, and participate in and support, waste exchange programs.

(b) The commission, the department, and the board shall provide education and training to river authorities, municipalities, and public groups on source reduction and waste minimization technologies and practices.

(c) The commission and the board shall develop incentives to promote the implementation of source reduction and waste minimization, including:

(1) board and commission recommendations to the governor for awards in recognition of source reduction and waste minimization efforts;

(2) an opportunity by joint rules of the commission and the board for an owner or operator of a facility to be exempted from the requirements of this subchapter on meeting appropriate criteria for practical economic and technical completion of the source reduction and waste minimization plan for the facility; and

(3) expedited review of a permit amendment application if the amendment is necessary to implement a source reduction and waste minimization project, considering only the directly affected parts of the permit.

(d) The commission and the board shall work closely with the Gulf Coast Hazardous Substance Research Center to identify areas in which the center could perform research in the development of alternative technologies or conduct related projects to promote source reduction and waste minimization.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.439 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991.

§ 361.510. Report to Legislature

Notwithstanding any other reporting requirement, the commission and the board shall jointly prepare a biennial report to the presiding officers of the

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legislature and the governor concerning the implementation of this subchapter. The report must include:

- (1) the status of the technical assistance program;
- (2) a description of progress toward reducing the volume of hazardous waste generated and the amount of pollutants and contaminants in the state;
- (3) an analysis of and recommendations for changes to source reduction and waste minimization programs, including consideration of additional enforcement provisions; and
- (4) an identification of any other needed pollution prevention activities.

Added by Acts 1991, 72nd Leg., ch. 296, § 2.01, eff. June 7, 1991. Renumbered from § 361.440 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.028(a), eff. Aug. 12, 1991.