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Veronica Taillon
7th Grade

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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line. <http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. <http://www.state.tx.us/Government>



Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0073

Mr. Kenneth James
Chair, Board of Regents
Stephen F. Austin State University
P.O. Box 6078
SFA Station
Nacogdoches, Texas 75962

Re: Whether chapter 573 of the Texas Government Code precludes the Stephen F. Austin State University Board of Regents from employing the university president's spouse (RQ-0004-GA)

SUMMARY

Chapter 573 of the Texas Government Code does not preclude the Stephen F. Austin State University Board of Regents from employing the university president's spouse.

Opinion No. GA-0074

Mr. Edward A. Dion
El Paso County Auditor
500 East San Antonio Street
El Paso, Texas 79901-2407

Re: Authority of a bail bond board to hire outside legal counsel over the objection of the county attorney (RQ-0005-GA)

SUMMARY

The El Paso County Bail Bond Board is a county entity. Government Code section 41.007 imposes a duty on the El Paso county attorney to provide legal counsel to the Board. *See* TEX.GOV'T CODE ANN. §41.007 (Vernon 1988). The Board may not seek outside legal counsel without the consent of the county attorney, and the El Paso county auditor may not pay any claim for such outside representation. There is no inherent conflict of interest in the dual roles of the county attorney in collecting bail bond forfeiture judgments and advising the Board.

Opinion No. GA-0075

Mr. Clarence R. Josselet, ARM, CPCU
Executive Director

State Office of Risk Management

300 West 15th Street
Austin, Texas 78701

Re: Whether the Employees Retirement System and the Teacher Retirement System must pay a share of the state employee workers' compensation claims costs allocated under Labor Code section 412.0123 (RQ-0001-GA)

SUMMARY

The allocation program that the State Office of Risk Management has established under section 412.0123 of the Labor Code applies to state agencies generally, with the exception of those agencies that hold their funds outside the state treasury and reimburse the general revenue fund under section 506.002 of the same code for workers' compensation claims costs. Because the Employees Retirement System and the Teacher Retirement System, whose funds are held in trust outside the state treasury, reimburse the state's general revenue fund under section 506.002(a), they are not required to participate in the allocation program established under Labor Code section 412.0123, *as adopted by* Act of May 25, 2001, 77th Leg., R.S., ch. 1456, §14.01, 2001 Tex. Gen. Laws 5167, 5194-95, *and by* Act of May 22, 2001, 77th Leg., R.S., ch. 559, §1, 2001 Tex. Gen. Laws 1076, 1076.

Opinion No. GA-0076

The Honorable Kevin Bailey
Chair, Committee on General Investigating
Texas House of Representatives
P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a school district may voluntarily pay the medical expenses and travel costs for a student injured in school or during a school activity (RQ-0007-GA)

SUMMARY

Section 33.085 of the Education Code authorizes a school district to purchase an insurance policy to cover a student's medical expenses for bodily injuries sustained in connection with interschool athletics or while engaging in school-sponsored activities on campus. A school district may pay medical costs and incidental travel costs for a student injured at school or in connection with a school activity if the school

board determines that the expenditure is necessary in the conduct of the public schools.

The district's payment of travel costs will not constitute an unconstitutional gift of public funds to an individual if the school board (1) determines that the expenditure's predominant purpose is to accomplish a public purpose, not to benefit private parties, (2) retains sufficient control over the expenditure to ensure that the public purpose is accomplished, and (3) ensures that the school district receives a return benefit.

Opinion No. GA-0077

The Honorable Ed C. Jones

Angelina County Attorney

P.O. Box 1845

Lufkin, Texas 75902-1845

Re: Whether a member of the board of directors of a water control and improvement district may simultaneously serve as an employee of that district (RQ-0012-GA)

S U M M A R Y

A member of the Board of Directors of the Central Water Control and Improvement District of Angelina County is prohibited from serving as an employee of the District in any capacity other than that of general manager.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200303282

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: May 28, 2003



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 17. STATE ARCHITECTURAL PROGRAMS

13 TAC §17.1

The Texas Historical Commission (THC) proposes an amendment to §17.1 of Chapter 17 (Title 13, Part 2 of the Texas Administrative Code) concerning the Preservation Trust Fund Grants and the Texas Preservation Trust Fund.

The purpose of the proposed amendments are to more conveniently enable grant recipients to be reimbursed for expenses incurred throughout the implementation of the grant funded project, and/or to provide grants without the requirement of matching funds or in-kind contributions for those projects that are deemed exceptional preservation projects.

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Oaks has also determined that for each year of the first five year period that the amendment is in effect the public benefit anticipated as a result of the amendment will be an increase in the number projects that can apply for grants under the Texas Preservation Trust Fund. Additionally, Mr. Oaks has determined that there will be no effect on small businesses.

Comments on the proposal may be submitted to F. Lawrence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under §442.005(q), Title 4 of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other articles, statutes or codes are affected by the proposed amendment.

§17.1. Preservation Trust Fund Grants.

(a) - (c) (No change.)

(d) Eligible match for grant assistance. Applicants eligible to receive grant assistance shall provide a minimum of one dollar in cash match to each state dollar for approved project costs. The commission or the Executive Director upon designation by the commission, by written policy, may approve up to 50 percent in-kind match for

projects involving highly significant and endangered properties. In exceptional circumstances and upon recommendation by the Executive Director of the commission, the commission may also waive the one to one cash match requirement completely, and/or approve any combination of matching cash or in-kind contribution percentages that the commission deems appropriate.

(e) Grant applications.

(1) An application schedule and [Application] deadline will be set by the commission, [is 5:00 p.m. on June 1 of each year, or 5:00 p.m. of the last regular work day of May if June 1 should fall on a weekend or holiday, or at other times as announced by the Texas Historical Commission;] application forms are to be received by the commission at its offices by this deadline.

(2) - (4) (No change.)

(f) - (h) (No change.)

(i) Grant reimbursement procedures.

(1) (No change.)

(2) All payment of grant funds shall be strictly on a reimbursement basis. Reimbursement may be made after the competitive award of contract and submission of proof of all incurred allowable expenses in increments of at least \$2,500 or at least 10% of the total project cost, whichever is greater; or according to a schedule as determined by the Executive Director of the commission; or [and corresponding payments totaling more than 50% but less than 75% of the total project cost, and/or] at the completion of the project after an acceptable required completion report and/or planning documents have been received by the commission.

(3) - (4) (No change.)

(j) - (p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 21, 2003.

TRD-200303183

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: July 6, 2003

For further information, please call: (512) 463-5711



CHAPTER 21. LOCAL HISTORY PROGRAMS

The Texas Historical Commission (THC) proposes to repeal §§21.1-21.31, concerning the Museum Services, Official

Texas Historical Marker, Historic Texas Cemetery and Awards programs, and proposes new §§21.1-21.3, 21.6-21.9, 21.12, 21.15 and 21.18 in its History Programs chapter. The purpose of the repeals and new sections is to update and clarify the criteria for administering these programs to bring the rules in line with current procedures. The new sections change the age criteria for topics eligible for subject markers from 75 to 50 years; change the date an individual can be eligible for a marker or for mentioning in a marker inscription from 20 to 10 years after his or her death; allow the THC to adopt internal procedures for approval or rejection of marker applications; clarifies ownership of Official Texas Historical Markers by the State of Texas; and clarifies the scope of the museum services, cemetery preservation and awards programs.

F. Lawrence Oaks, executive director, has determined that, for the first five-year period the proposed sections are in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the sections.

F. Lawrence Oaks also has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections is that individuals, organizations or county historical commissions desiring to preserve their local history through these programs increased opportunities to do so with the changes proposed. There is no adverse economic effect on small or micro businesses, or on businesses of any size, as a result of enforcing or administering the sections, because, although there is a cost associated with obtaining an Official Texas Historical Marker and registering a Historic Texas Cemetery, the programs are optional and businesses are not required to participate in them. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Cynthia Beeman at (512) 463-5854 in THC's History Programs Division. Written comments on the proposal may be submitted to Cynthia Beeman, History Programs Division, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78712-2276, within 30 days of publication in the Texas Register.

Under Section 2007.003(b) of the Government Code, THC has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, THC is not required to complete a takings impact assessment regarding these rules.

13 TAC §§21.1 - 21.31

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Historical Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapters 442.005 and 442.006, which authorizes THC to adopt rules to carry out its programs and to direct and coordinate the museum services, historical markers, Historic Texas Cemetery and Awards programs.

The repeals implement the Government Code, Sections 442.005 and 442.006.

- §21.1. *Oversight for Museum Services.*
- §21.2. *Grant Program for History Museums.*
- §21.3. *Winedale Museum Seminar.*
- §21.4. *Museum On-Site Consultations.*

- §21.5. *State Marker Review Board.*
- §21.6. *Definition of Official Texas Historical Markers.*
- §21.7. *Documentation.*
- §21.8. *Permanent Archives.*
- §21.9. *County Approval of Applications.*
- §21.10. *Use of Emblems or Logos.*
- §21.11. *Response Required of Applicant.*
- §21.12. *Burden of Proof.*
- §21.13. *Relative Weight of Data.*
- §21.14. *Subject Marker Approval.*
- §21.15. *Marking Individuals.*
- §21.16. *Marking Events.*
- §21.17. *Recorded Texas Historic Landmarks.*
- §21.18. *Relocated Structures.*
- §21.19. *Artificial Siding.*
- §21.20. *Permanence of Recorded Texas Historic Landmark Designation.*
- §21.21. *Restraints to Changes in Recorded Texas Historic Landmarks.*
- §21.22. *Disposition of a Recorded Texas Historic Landmark Marker.*
- §21.23. *Placement of Historical Markers.*
- §21.24. *Relocation of Historical Markers.*
- §21.25. *Significance of Marker Topics.*
- §21.26. *Marker Inscriptions.*
- §21.27. *Restraint on Including Owners or Restorers in Marker Text.*
- §21.28. *Replacement of Markers.*
- §21.29. *Owner's Permission.*
- §21.30. *Historic Texas Cemetery.*
- §21.31. *Awards.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303132

F. Lawrence Oaks
Executive Director
Texas Historical Commission

Proposed date of adoption: July 25, 2003

For further information, please call: (512) 463-6100

CHAPTER 21. HISTORY PROGRAMS

SUBCHAPTER A. INTRODUCTION

13 TAC §§21.1 - 21.3

The new sections are proposed under the Government Code, Chapter 442, which authorizes THC to adopt rules to carry out its programs.

The new sections implement the Government Code, Sections 442.005 and 442.006.

§21.1. Object.

The Texas Historical Commission, hereafter referred to as the commission, is specifically empowered to adopt reasonable rules and procedures concerning the following programs: Official Texas

Historical Marker, Historic Texas Cemetery, Museum Services, Awards. These rules and procedures assure a degree of uniformity and quality of these programs, as provided by the Government Code, §442.005 and §442.006.

§21.2. Scope.

The intent of these rules is to provide criteria by which the commission will implement and administer the Official Texas Historical Marker, Historic Texas Cemetery, Museum Services and Awards programs. These rules and procedures are within the legal authority of the commission and can be defined through the rulemaking authority of the commission.

§21.3. Definitions.

When used in this chapter, the following words or terms have the following meanings unless the context indicates otherwise:

(1) Official Texas Historical Marker. Official Texas Historical Markers are those markers and plaques the Texas Historical Commission awards, approves or administers. They include centennial markers the State of Texas awarded in the 1930s; Civil War Centennial markers from the 1960s; and medallions and markers the commission's predecessor, the Texas State Historical Survey Committee, awarded.

(2) Historical marker application. Historical marker application means a current version of the commission's Official Texas Historical Marker Application Form and all required supporting documentation as required in §21.4 of this chapter (relating to Application Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303133

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Proposed date of adoption: July 25, 2003

For further information, please call: (512) 463-6100



SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §§21.6 - 21.9

The new sections are proposed under the Government Code, Chapter 442, which authorizes THC to adopt rules to carry out its programs.

The new sections implement the Government Code, Sections 442.005 and 442.006.

§21.6. Recorded Texas Historic Landmark Designation.

(a) The commission may award the Recorded Texas Historic Landmark (RTHL) designation to historic structures that meet criteria set forth in this chapter.

(b) The RTHL designation becomes effective upon approval by the Texas Historical Commission.

(c) Official Texas Historical Markers signify the RTHL designation; designation comes only through application to and approval by the commission.

(d) Once designated, properties are subject to provisions of the Government Code, §442.006(f) and rules of the commission.

§21.7. Application Requirements.

(a) Any individual, group or county historical commission may apply to the commission for an Official Texas Historical Marker. The application shall include:

(1) a completed current Official Texas Historical Marker application form;

(2) a comprehensive research paper on the topic under consideration that contains a narrative history including:

(A) an introduction with historical background and broad historical context of the topic under consideration;

(B) a detailed chronological history that documents the complete history of the topic; and

(C) a concluding section that summarizes the history and addresses the significance of the topic;

(3) Reference notes. Facts contained in the research paper that cannot be assumed to be common knowledge shall be documented with reference notes, which can be footnotes, endnotes or parenthetical notes;

(4) Bibliography of sources cited. A bibliography is a list of all the sources used in researching the topic.

(A) for published sources, the bibliography shall include information on the author, title, publisher and date of publication.

(B) for unpublished sources, the bibliography shall include a description and date of the document, and the location of the collection or record;

(C) for oral history sources, the bibliography shall include the name of the interviewer and the interviewee; the date of the interview; the relevance of the interviewee to the topic under consideration; a statement regarding existence and location of any related notes, transcripts and/or recordings;

(5) Map. A letter-size map indicating the proposed marker location;

(6) Photographs.

(A) For subject markers, the requirement is a current photograph of the proposed marker location.

(B) For Recorded Texas Historic Landmark markers, the photographic requirements are:

(i) at least one historic photograph of the structure under review;

(ii) one current photograph of each elevation of the exterior of the structure; and

(iii) additional photographs the commission staff may request to facilitate determination of a structure's eligibility for designation.

(C) For Historic Texas Cemetery markers, the requirements are:

(i) a current photograph of the proposed marker location;

(ii) at least one current photograph showing an over-all view of the cemetery; and

(iii) photographs that document individual features referred to in the application's narrative history;

(7) Authorization. Permission is required for placement of the marker, as indicated by the signature of the property owner;

(8) County historical commission approval. The county historical commission (CHC) must approve the application history, content and documentation. If a county has no active CHC, the county judge's approval may be substituted; and

(9) Additional documentation.

(A) Recorded Texas Historic Landmark markers also require:

(i) letter-size floor plans delineating any alterations or additions, with relevant dates, to the structure under consideration for designation and relevant dates;

(ii) a letter-size site plan showing the building or structure under consideration, plus any outbuildings or other significant features, such as landscaping; and

(iii) the legal description of the property (lot and block numbers; metes and bounds).

(B) Historic Texas Cemetery markers also require proof of Historic Texas Cemetery designation.

(b) The Texas Historical Commission is the final arbiter on all matters related to marker eligibility, inscriptions, titles and placement.

(c) All materials submitted for an Official Texas Historical Marker become the property of the Texas Historical Commission and part of the permanent archival files of the agency, and are subject to the Texas Open Records Act.

(d) All Official Texas Historical Markers are the property of the State of Texas and may be recalled by the commission.

§21.8. Criteria Considerations.

(a) Subject markers. Subject markers may be awarded to topics of local, state or national historical significance that meet the following requirements:

(1) Age. A topic commemorated with a subject marker must relate to a time at least 50 years before the date of application, with the following exceptions:

(A) Individuals. An individual may be the topic of a marker or be mentioned in a marker inscription 10 years after his or her death.

(B) Events. If an event changed the course of state or local history, that event may be eligible for a marker 30 years after its occurrence. An event must have a specific beginning and ending date, and the overall history of the topic under consideration must have concluded at least 30 years before the date of application; debuts or founding dates of topics with continuing history are not considered events.

(C) Waiver of age requirement. The commission may waive the age requirement for topics deemed exceptionally significant;

(2) Historical significance. The narrative history must clearly convey the significance of the topic. A topic is considered to have historical significance if it had influence, effect or impact on the course of history or cultural development; age alone does not determine significance.

(3) Marker location. Subject markers must be placed at publicly accessible sites that are relevant to the history being commemorated.

(b) Recorded Texas Historic Landmark markers. Recorded Texas Historic Landmark markers may be awarded to historic structures that meet the following criteria:

(1) Age. A structure may be eligible for the Recorded Texas Historic Landmark marker 50 years after its date of construction. The commission may waive the age requirement for structures deemed exceptionally significant;

(2) Historical significance. The narrative history must clearly convey the structure's historical significance. A structure is considered to have historical significance if it had influence, effect or impact on the course of history or cultural development; age alone does not determine significance.

(3) Architectural integrity. The commission adheres to *The Secretary of Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* in making determinations for eligibility for historical designations with regard to architectural integrity. A structure has architectural integrity if its exterior appearance retains and exhibits a preponderance of the essential physical features of its original design and materials, and is in a good state of repair.

(4) Other considerations.

(A) A structure that has been moved cannot be considered for designation as a Recorded Texas Historic Landmark (RTHL).

(B) A structure cannot be considered for RTHL designation if artificial siding applied to its exterior within the preceding 50 years covers or alters its historic architectural materials or features.

(C) RTHL is a permanent legal designation and may not be removed from the property in the event of a transfer of ownership or unauthorized removal of the marker. The marker awarded to any designated structure remains with that structure and may not be removed or displayed elsewhere unless the Texas Historical Commission gives express approval for such action.

(D) An RTHL marker must be located on or immediately adjacent to the designated structure.

(E) In accordance with provisions of the Government Code, §442.006(f), if appreciable changes not properly approved by the Texas Historical Commission are made to a designated structure, the Texas Historical Commission may withdraw the designation and the marker.

(c) Historic Texas Cemetery markers. A marker may be awarded to a cemetery only if the commission has designated the cemetery as a Historic Texas Cemetery. The marker must be located either at or immediately adjacent to the designated cemetery.

§21.9. Application Evaluation Procedures.

The commission may adopt internal procedures governing evaluation for approval or rejection of applications for Official Texas Historical Markers, Recorded Texas Historic Landmarks or Historic Texas Cemetery designations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 21, 2003.

TRD-200303151

F. Lawrence Oaks
Executive Director
Texas Historical Commission
Proposed date of adoption: July 25, 2003
For further information, please call: (512) 463-6100



SUBCHAPTER C. HISTORIC TEXAS CEMETERY PROGRAM

13 TAC §21.12

The new section is proposed under the Government Code, Chapter 442, which authorizes THC to adopt rules to carry out its programs.

The new section implements the Government Code, Sections 442.005 and 442.006.

§21.12. Historic Texas Cemetery.

(a) Cemeteries that are deemed worthy of recognition and preservation for their historic associations are eligible for listing as a Historic Texas Cemetery. The purpose of this listing is to alert the present and future owners of the existence of the cemetery. Such cemeteries are eligible for this status if established at least 50 years ago. The History Programs Committee may waive the age requirement for cemeteries that are deemed to be exceptionally significant. Listing as a Historic Texas Cemetery does not restrict in any way the private owner's use of the land.

(b) Any individual, organization, or agency may submit an application. The Texas Historical Commission shall notify the owner of the property containing the cemetery via certified mail about the proposed listing.

(c) Applications for Historic Texas Cemetery listing are available at the Commission. Completed applications, along with the processing fee of \$25 (twenty-five dollars), should be sent directly to the Commission for processing and review. The Commission may request further documentation if necessary. The burden of proof of the existence of the cemetery is on the applicant. If the application is accepted for listing, the applicant and landowner will be sent a Declaration of Dedication to be completed and filed with the appropriate county clerk's office. Applications rejected because of ineligibility may be reviewed by the History Programs Committee upon the request of the applicant. The cemetery will be officially recognized as a Historic Texas Cemetery when the applicant forwards proof of the recording of the Declaration of Dedication from the appropriate county clerk's office.

(d) Listing as a Historic Texas Cemetery must be based on complete documentation of the cemetery's eligibility as outlined in the application form available from the Commission. Examples of documentation that may be required include deed and title, plot records, archival documents, photographs, oral histories, remote sensing, and archeological data.

(e) The Historic Texas Cemetery listing may be removed only by action of the Commission or by an order of the court of proper jurisdiction removing the dedication or permitting the removal of the cemetery and the return of the land to other purposes. A transfer of ownership does not result in a removal of the dedication.

(f) A Historic Texas Cemetery may be further recognized with an Official Historic Texas Cemetery Marker, available for purchase through the Commission. The marker should be placed in accordance with §§21.7-21.9 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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F. Lawrence Oaks
Executive Director
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For further information, please call: (512) 463-6100



SUBCHAPTER D. MUSEUM SERVICES PROGRAM

13 TAC §21.15

The new section is proposed under the Government Code, Chapter 442, which authorizes THC to adopt rules to carry out its programs.

The new section implements the Government Code, Sections 442.005 and 442.006.

§21.15. Museum Services.

(a) All policies and procedures relating to museum services and operation of the Sam Rayburn House Museum shall be determined by the Commission.

(b) The Commission may establish a grant program to assist small history museums in the State of Texas.

(1) The conditions of eligibility, procedures for consideration, and criteria for evaluating applications for such grants shall be determined by the Commission and made available to members of the public.

(2) Decisions on the grants shall be made by vote of the Commission in a duly posted open meeting.

(3) Grants shall be made without regard to the race, religion, ethnicity, gender, political affiliation, or national origin of the applicant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 21, 2003.

TRD-200303153
F. Lawrence Oaks
Executive Director
Texas Historical Commission
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For further information, please call: (512) 463-6100



SUBCHAPTER E. AWARDS PROGRAM

13 TAC §21.18

The new section is proposed under the Government Code, Chapter 442, which authorizes THC to adopt rules to carry out its programs.

The new section implements the Government Code, Sections 442.005 and 442.006.

§21.18. Awards.

(a) The Commission may establish and present such awards and prizes as it determines to be appropriate.

(b) The conditions of eligibility, procedures for consideration, and criteria for judging such awards shall be determined by the Commission and made available to members of the public who may be interested in nominating individuals or organizations for such awards.

(c) Decisions on the awards shall be made by vote of the Commission in a duly posted open meeting.

(d) Awards shall be made without regard to the race, religion, ethnicity, gender, political affiliation, or national origin of the nominee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 21, 2003.

TRD-200303154

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Proposed date of adoption: July 25, 2003

For further information, please call: (512) 463-6100



CHAPTER 24. RESTRICTED CULTURAL RESOURCE INFORMATION

13 TAC §§24.7, 24.9, 24.19, 24.23

The Texas Historical Commission proposes amendments to §§24.7, 24.9, 24.19, and 24.23 (relating to Definitions, The Texas Historic Sites Atlas, Restricted Information Application Submission and Review Procedures and Access Committee Procedures) of Title 13, Part 2, Chapter 24 of the Texas Administrative Code (relating to Restricted Cultural Resource Information). These changes are needed to further clarify the conditions and procedures related to access to restricted information under the control of the Commission.

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Oaks has also determined that for each year of the first five year period the amendments are in effect the public benefit anticipated as a result of the amendments will be improved care of site locational information associated with cultural resource in the State of Texas. Additionally, Mr. Oaks has determined that there will be no effect on small businesses, and there is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to F. Lawrence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under Title 9, Chapter 191 of the Texas Natural Resources Code, which provides the Commission

with authority to promulgate rule that will reasonably effect the purposes of this chapter.

No other articles, statutes or codes are affected by the proposed amendments.

§24.7. Definitions.

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

(1) - (10) (No change.)

(11) Legitimate scientific or legal interest--An interest based on specific research goals associated with professional archeological, historical, or architectural research as defined in Chapter 191 of the Texas Natural Resources Code, or legal jurisdiction directly related to ownership of sites classified as restricted under this title.

(A) Firms engaged in the business of cultural resource management for profit that do not have a qualified staff archeologist do not have a legitimate scientific or legal interest.

(B) Entities granted access to RCRI solely on the basis of ownership shall be granted access only to information on the sites they actually own, to the extent it is practical to limit such access. They shall not be granted statewide access to the restricted portion of the THSA.

(C) Technical support personnel working with and under the supervision of a currently authorized RCRI user that has a legitimate scientific or legal interest.

(D) College students must work under the supervision of a currently authorized RCRI user.

(12) - (19) (No change.)

§24.9. The Texas Historic Sites Atlas.

The THSA is an evolving database of cultural resource information administered by the commission. This database is accessible to the public through the World Wide Web. The THSA contains information on archeological sites, cemeteries, historic structures, engineering features, and industrial sites, as well as digital maps of these site locations.

§24.19. Restricted Information Application Submission and Review Procedures.

(a) (No change.)

(b) Curriculum vitae. To prove his or her credentials for access, an applicant who is not a member of the Texas Archeological Stewardship Network must also submit a current curriculum vitae to the commission, if such a document is not already on file with the commission.

(c) Access agreement. The applicant must also sign an access agreement provided by the commission and submit it. A copy of the access agreement document will be kept on file at the Texas Historical Commission.

(d) [(e)] Initial review by the THSA Program Director. The THSA Program Director reviews all applications and vitae for completeness, and will notify the applicant of any additional information required.

(e) [(f)] Consideration of qualified application. When all required application information has been received and reviewed, the THSA Program Director will either rule on access relative to criteria set forth in §24.17(a) of this title (relating to Restricted Cultural Resource Information Access Qualifications), or forward the application to the access committee. If the applicant is approved for RCRI access under §24.17(a) of this title, the THSA Program Director will notify the applicant of this approval within 10 working days. The access committee

will review all applicants for qualification under §24.17(b) of this title, and the THSA Program Director will notify the applicant of the committee's decision.

(f) [(e)] Denial of application. If an application is denied, the THSA Program Director will notify the applicant in writing of the reasons for denial. Any appeals of these decisions must be made before the commission at one of its regularly scheduled public meetings.

(g) [(f)] Registration of approved applicant. The [Access agreement. Once any application has been approved by either the THSA Program Director, access committee, or commission, an access agreement will be forwarded to the applicant. The applicant must then sign the access agreement and return it to the commission. Once received, the] THSA Program Director will register the applicant as an RCRI user, and a written notice documenting registration will be forwarded to the registered RCRI user. When appropriate, the commission will also supply the applicant with a THSA Access Account, which will enable the applicant to access the restricted portion of the THSA database. [A copy of the access agreement document will be kept on file at the Texas Historical Commission.]

(h) [(g)] The commission may conduct an investigation to verify any information submitted on an application.

(i) [(h)] False information. If the access committee determines that an applicant provided false information on an application, the committee will take the following actions.

(1) Recommend denial of the application.

(2) Notify the applicant of the information considered to be false and give the applicant a reasonable period of time, not to exceed 30 days, to respond.

(3) If, upon examination of the applicant's response, or failure to respond, the access committee determines that false information was knowingly provided on the application, the access committee may recommend to the commission that the applicant be denied access to RCRI for a period not to exceed two years.

(4) The commission may consider and act on this recommendation, upon due notice to the applicant, at any regular or called meeting of the commission.

(j) Special provision for access to the THC Library. Temporary access to the archeological materials in the THC Library may be granted to persons qualified under either §24.17(a) or (b) of this title by the THSA Program Manager or by a THC Staff Archeologist. Such authorization must be signed by the THC staff member and a copy kept on file at the Texas Historical Commission.

§24.23. *Access Committee Procedures.*

(a) (No change.)

(b) Committee meeting schedule. Meetings of the committee are held at the call of the THSA Program Director, or whenever requested by one of the members. The committee may deliberate over applications by e-mail or other appropriate communications media.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 21, 2003.

TRD-200303181

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Earliest possible date of adoption: July 6, 2003

For further information, please call: (512) 463-5711

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TITLE 16. ECONOMIC REGULATION

**PART 2. PUBLIC UTILITY
COMMISSION OF TEXAS**

**CHAPTER 25. SUBSTANTIVE RULES
APPLICABLE TO ELECTRIC SERVICE
PROVIDERS**

**SUBCHAPTER O. UNBUNDLING AND
MARKET POWER**

DIVISION 3. CAPACITY AUCTION

16 TAC §25.381

The Public Utility Commission of Texas (commission) proposes an amendment to §25.381, relating to Capacity Auctions. The proposed amendment will modify §25.381(h)(3)(B)(iii) and (vi) by requiring that two-year strips be auctioned for the 2004 through 2005 time period. The current rule language indicates that the commission will make an evaluation as to the need for the two-year strip. In addition, due to timing issues, the proposed amendment modifies §25.381(h)(1)(A)(i) to delay the September 2003, auction until October 2003, to allow the amendment to be finalized and take effect, and still allow for 60-day notice of the auction. Project Number 27826 is assigned to this proceeding.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication (comments due June 20, 2003). Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 27826.

Matthew Troxle, Senior Retail Market Analyst, Electric Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Troxle has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be increased competitiveness in the wholesale market through increased availability of generation and increased liquidity. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Troxle has also determined that for each year of the first five years the proposed section is in effect there should be no

effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this amendment pursuant to PURA §39.153, which grants the commission authority to establish rules that define the scope of the capacity entitlements to be auctioned, and the procedures for the auctions.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 31.002, 39.153, 39.201, and 39.262.

§25.381. *Capacity Auctions.*

(a) - (g) (No change.)

(h) Auction process.

(1) Timing issues.

(A) Frequency of auctions.

(i) Auction dates. Capacity auctions shall begin on March 10, July 10, September 10, and November 10 of each year, except in 2003, when the September 10, auction will be held on October 7, 2003. If the date for an auction start falls on a weekend or banking holiday, then that auction shall begin on the first business day after the weekend or banking holiday.

(ii) - (iii) (No change.)

(B) (No change.)

(2) (No change.)

(3) Term of auctioned capacity.

(A) (No change.)

(B) Schedule of subsequent auctions.

(i) - (ii) (No change.)

(iii) The auction in September of a year will auction:

(I) Approximately 30% of the entitlements as the one-year strips for the next year; ~~and~~

(II) Approximately 20% of the entitlements as discrete months for each of the 12 calendar months of the next year; ~~and~~[-]

(III) In 2003, approximately 20% of the entitlements as two one-year strips, with the strips auctioned jointly (the 12 months of 2004 and 2005).

(iv) - (v) (No change.)

(vi) The commission will periodically evaluate the need to sell one-year and two-year strips and make appropriate adjustments to the terms of the auctions. ~~[In June of 2003, an evaluation will be made by the commission as to the need for another set of two-year strips (the 24 months of 2004 through 2005). If such term is deemed to be necessary, the next set of two-year strips will be auctioned in September of 2003. If such term is not deemed to be necessary, then subsequent auctions will auction 50% of entitlements over one-year strips and 50% of the entitlements as discrete months.]~~

(C) (No change.)

(4) - (8) (No change.)

(i) - (m) (No change.)

~~[(n) This section, as adopted, becomes effective on August 1, 2002.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2003.

TRD-200303196

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: July 6, 2003

For further information, please call: (512) 936-7308



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

16 TAC §76.800

The Texas Department of Licensing and Regulation ("Department") proposes amendments to §76.800, regarding fees for the Water Well Driller and Pump Installer program.

The proposed amendments modify the fees for examinations to reflect the actual cost of examinations to the Department. The proposed amendments also increase the annual licensure fees to cover the costs of administering the water well driller and pump installer programs, including the costs for licensure through the Texas Online Authority.

These rules are necessary to comply with §51.202(a) of the Texas Occupations Code, which requires the Texas Commission of Licensing and Regulation to set fees, in amounts reasonable and necessary to cover the costs of administering the programs or activities under its jurisdiction, including licenses and examinations for the Water Well Driller and Pump Installer Program. In addition, the rules are necessary to comply with §32.002(i) of the Texas Water Code, which requires the Department to set fees imposed by Chapter 32 in amounts that are reasonable and necessary to cover the costs of administering Chapter 32. Finally, the rules are necessary to comply with §33.002(h) of the Texas Water Code, which requires the Department to set fees imposed by Chapter 33 in amounts that are reasonable and necessary to cover the costs of administering Chapter 33. The Department is engaged in examination development activities for the water well driller and pump installer program, and is also modifying the examination delivery mechanism so that examinations can be administered at multiple sites throughout Texas. The current examination and licensure fee level is inadequate to cover the cost of administering these activities.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the amended rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit

will be a water well driller and pump installer licensure and examination program that is funded at a level that enables the Department to efficiently license water well drillers and pump installers, along with protecting public health and safety. The probable economic cost of complying with the examination fee rule will be a decrease of \$50 for those taking the water well driller examination, a decrease of \$25 for those taking the monitor well driller examination, and depending upon the number of other examinations taken, an increase of \$50 per other exam. The probable economic cost of complying with the licensing fee increase will be \$15 for those complying with the rule.

Comments on the proposal may be submitted to Chris Kadas, General Counsel, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: chris.kadas@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Water Code, Chapters 32 and 33 and Texas Occupations Code, Chapter 51, §51.202(a), which requires the Department to set fees in amounts reasonable and necessary to cover the costs of administering Department programs and activities.

The statutory provisions affected by the proposal are those set forth in Texas Water Code, Chapters 32 and 33 and Texas Occupations Code, Chapter 51.

No other statutes, articles, or codes are affected by the proposal.

§76.800. Fees.

(a) Exam Fees.

(1) Water Well Driller [and Installer application] exam fee is \$100. [~~fees are \$150 per exam.~~]

(2) Monitor Well Driller exam fee is \$100. [~~Re-exam fee is \$125 for each exam.~~]

(3) General Pump Installer exam fee is \$50.

(4) Windmills, Hand Pumps and Pump Jacks exam fee is \$50.

(5) Pump Installer Fractional to 5 Horse Power exam fee is \$50.

(6) Pump Installer 5 Horse Power and Over exam fee is \$50.

(7) Closed Loop Geothermal Well Driller exam fee is \$50.

(8) Line Shaft Turbine Pumps exam fee is \$50.

(b) Annual License Fees.

(1) Driller's license is \$215 [~~\$200~~].

(2) Installer's license is \$215 [~~\$200~~].

(3) A combination Driller and Installer license is \$325 [~~\$310~~].

(4) Apprentice registration is \$65 [~~\$50~~].

(5) A combination Driller and Installer Apprentice registration is \$115 [~~\$100~~].

(c) [~~Annual~~] License Renewal Fees.

(1) Driller's renewal license is \$215 [~~\$200~~].

(2) Installer's renewal license is \$215 [~~\$200~~].

(3) A combination Driller and Installer renewal license is \$325 [~~\$310~~].

(4) Apprentice renewal registration is \$65 [~~\$50~~].

(5) A combination Driller and Installer Apprentice renewal registration is \$115 [~~\$100~~].

(d) Lost, revised, or duplicate license \$25.

(e) Variance request fee is \$100.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 22, 2003.

TRD-200303187

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 6, 2003

For further information, please call: (512) 463-7348

◆ ◆ ◆
TITLE 30. ENVIRONMENTAL QUALITY
PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §312.2, §312.8

The Texas Commission on Environmental Quality (commission) proposes amendments to §312.2 and §312.8.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On September 15, 1999, the commission granted a petition for rulemaking by Safety-Kleen Systems, Inc. for amendments to Chapter 312, concerning Sludge Use, Disposal, and Transportation; 30 TAC Chapter 324, concerning Used Oil Standards; and 30 TAC Chapter 330, concerning Municipal Solid Waste. This rulemaking is the result of that petition. The petition identified a conflict in commission rules where waste in waste management units containing recyclable used oil could be construed as being jointly regulated under Chapter 324 and Chapters 330 and 312.

On November 14, 2002, an advisory group meeting was held in Austin, Texas, to receive input from the regulated community and other interested entities on the proposed rule language, developed from the petition and the draft rule amendments to Chapters 312, 324, and 330. Entities registered in accordance with the Chapter 312 requirements voiced concern about alternative management of grit trap waste (i.e., the proposal to allow for commingling of grit trap waste regulated under Chapter 312 and used oil regulated under Chapter 324). Many of the advisory group members commented that there is no justification for a change to the current regulations. Advisory group members also commented that grit traps are not designed to accumulate oil and the existence of significant amounts of used oil found in grit traps indicates operational issues at facilities where such grit

trap waste is found. The majority of the advisory group and other interested entities recommended changes to clarify that Chapter 312 does not apply to oily water mixtures in waste management units and that oil-water mixtures from waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission has identified language modifications that are needed in Chapters 312, 324, and 330 regarding this matter and, therefore, rule language modifications are being proposed concurrently for these chapters.

SECTION BY SECTION DISCUSSION

Proposed §312.2, Applicability, amends subsection (g) to indicate that Chapter 312 does not apply to oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been engineered for oil-water separation. Oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. Two commas are proposed for deletion in subsection (f) because they are not needed.

Proposed §312.8, General Definitions, adds new paragraph (37) to provide a definition of grit trap and amends the definition of grit trap waste.

FISCAL NOTE

Jan Washburn, Manager of Strategic Planning, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state or local government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency.

Ms. Washburn also determined that, for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of the proposed rules will be potentially increased readability of the rules by persons regulated by the agency. This should assist the regulated community in selecting the best management practice for their particular waste. Additionally, it is anticipated the change will assist agency Field Operations staff in enforcement of the rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The proposed rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed

rule amendments do not satisfy the definition of a major environmental rule. This rulemaking proposes to add regulatory language which states that oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been engineered for oil-water separation are not regulated under Chapter 312. In addition, the proposed rules contain language stating that oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The proposed rulemaking adds a definition of grit trap and amends the definition of grit trap waste. The amendments are not a major environmental rule because they are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure.

In addition, a draft regulatory impact assessment is not required because the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The rulemaking does not exceed a standard set by federal law, but conforms with federal law. The rulemaking does not exceed an express requirement of state law but conforms with state law. This rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This rulemaking does not adopt a rule solely under the general powers of the agency, but also under specific state law, namely Texas Health and Safety Code (THSC), §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures. Finally, this rulemaking is not proposed on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. The commission invites public comment on the draft regulatory analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary analysis for this proposed rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to explain that oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been engineered for oil-water separation are not regulated under Chapter 312 and to explain that oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The proposed rulemaking will substantially advance the stated purpose by adding a definition of grit trap in §312.8 and adding language in §312.2(g) specifying that waste in certain waste management units containing recyclable used oil is regulated under Chapter 324 and is not subject to Chapter 312. The promulgation and enforcement of these amended rules will not burden private real property nor adversely affect property values because the proposed rule amendments will merely specify that waste in certain waste management units that contain recyclable used oil is being regulated solely under the used oil rules in Chapter 324. Therefore, the proposed rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules and do not govern or authorize any actions subject to the CMP. The proposed rulemaking defines grit trap and grit trap waste; indicates that Chapter 312 does not apply to oily water mixtures in waste management units; and indicates that oil-water mixtures from waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., July 7, 2003, and should reference Rule Log Number 1999- 074-312-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.011, which gives the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures.

The proposed amendments implement TWC, §5.103 and §5.105; and THSC, §361.024 and §371.028.

§312.2. *Applicability.*

- (a)-(e) (No change.)

(f) This chapter applies to land where sewage sludge or domestic septage is applied[;] to a surface disposal site[;] and to a sewage sludge incinerator.

(g) This chapter applies to any person who transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste. This chapter does not apply to oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil/water separators or have been engineered for oil-water separation. These waste management units by design are not plumbed to a municipal sanitary sewer. Oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324 of this title (relating to Used Oil Standards).

- (h)-(l) (No change.)

§312.8. *General Definitions.*

The following words and terms, when used in this chapter, have the following meanings.

- (1)-(36) (No change.)

(37) Grit trap--A unit/chamber that allows for the sedimentation of solids from an influent liquid stream by reducing the flow velocity of the influent liquid stream. In a grit trap, the inlet and the outlet are both located at the same vertical level, at, or very near, the top of the unit/chamber; the outlet of the grit trap is connected to a sanitary sewer system. A grit trap is not designed to separate oil and water.

(38) [(37)] Grit trap waste--Includes waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments. The term does not include material collected in an oil/water separator or in any other similar waste management unit designed to collect oil.

(39) [(38)] Groundwater--Water below the land surface in the saturated zone.

(40) [(39)] Holocene time--The most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. Holocene time began approximately 10,000 years ago.

(41) [(40)] Industrial wastewater--Wastewater generated in a commercial or industrial process.

(42) [(41)] Institution--An established organization or corporation, especially of a public nature or where the public has access, such as child care facilities, public buildings, or health care facilities.

(43) [(42)] Land application--The spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

(44) [(43)] Land with a high potential for public exposure--Land that the public uses frequently and/or is not provided with a means of restricting public access.

(45) [(44)] Land with a low potential for public exposure--Land that the public uses infrequently and/or is provided with a means of restricting public access.

(46) [(45)] Leachate collection system--A system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sludge unit.

(47) [(46)] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(48) [(47)] Liner--Soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less. Soil liners shall be of suitable material with more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, a plasticity index greater than 15, compaction of greater than 95% Standard Proctor at optimum moisture content, and will be at least two feet thick placed in six-inch lifts. Synthetic liners shall be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(49) [(48)] Lower explosive limit for methane gas--The lowest percentage of methane in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

(50) [(49)] Metal limit--A numerical value that describes the amount of a metal allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g. kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

(51) [(50)] Monofill--A landfill or landfill trench in which sewage sludge is the only type of solid waste placed.

(52) [(51)] Municipality--A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency under Clean Water Act, §208, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, or an integrated waste management facility as defined in Clean Water Act, §201(e), as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(53) [(52)] Off-site--Property which cannot be characterized as "on-site."

(54) [(53)] On-site--The same or contiguous property owned, controlled, or supervised by the same person. If the property is divided by public or private right-of-way, the access shall be by crossing the right-of-way or the right-of-way shall be under the control of the person.

(55) [(54)] Operator--The person responsible for the overall operation of a facility or beneficial use site.

(56) [(55)] Other container--Either an open or closed receptacle, including, but not limited to, a bucket, box, or a vehicle or trailer with a load capacity of one metric ton (2,200 pounds) or less.

(57) [(56)] Owner--The person who owns a facility or part of a facility.

(58) [(57)] Pasture--Land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, forbs, or stover.

(59) [(58)] Pathogenic organisms--Disease-causing organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(60) [(59)] Person who prepares sewage sludge--Either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

(61) [(60)] Place sewage sludge or sewage sludge placed--Disposal of sewage sludge on a surface disposal site.

(62) [(61)] Pollutant--An organic or inorganic substance, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the executive director, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

(63) [(62)] Process or processing--For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment."

(64) [(63)] Public contact site--Land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and/or golf courses.

(65) [(64)] Range land--Open land with indigenous vegetation.

(66) [(65)] Reclamation site--Drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and/or construction sites.

(67) [(66)] Runoff--Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off the land surface.

(68) [(67)] Seismic impact zone--An area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

(69) [(68)] Sewage sludge--Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during preliminary treatment of domestic sewage in a treatment works.

(70) [(69)] Sewage sludge debris--Solid material such as rubber, plastic, glass, or other trash which may pass through a wastewater treatment process or sludge process or may be collected with septage. This solid material is visibly distinguishable from sewage sludge. This material does not include grit or screenings removed during the preliminary treatment of domestic sewage at a treatment works, nor does it include grit trap waste.

(71) [(70)] Sludge lagoon--An existing surface impoundment located on-site at a wastewater treatment plant for the storage of sewage sludge. Any other type impoundment shall be considered an active sludge unit, as defined in this section.

(72) [(71)] Sludge unit--Land on which only sewage sludge is placed for disposal. A sludge unit shall be used for sewage sludge. This does not include land on which sewage sludge is either stored or treated.

(73) [(72)] Sludge unit boundary--The outermost perimeter of a surface disposal site.

(74) [(73)] Source separated yard waste--For purposes of this chapter, shall have the same definition as found in Chapter 332 of this title (relating to Composting).

(75) [(74)] Specific oxygen uptake rate (SOUR)--The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

(76) [(75)] Staging--Temporary holding of sewage sludge at a beneficial use site, for up to a maximum of seven calendar days, prior to the land application of the sewage sludge.

(77) [(76)] Store or storage--The placement of sewage sludge on land for longer than seven days.

(78) [(77)] Temporary storage--Storage of waste regulated under this chapter by a transporter, which has been approved in writing by the executive director, in accordance with §312.147 of this title (relating to Temporary Storage).

(79) [(78)] Three hundred sixty-five day period--A running total which covers the period between sludge application to a site and the nutrient uptake of the cover crop.

(80) [(79)] Total solids--The materials in sewage sludge that remain as residue if the sewage sludge is dried at 103 degrees Celsius to 105 degrees Celsius.

(81) [(80)] Transporter--Any person who collects, conveys, or transports sewage sludge, water treatment plant sludges, grit trap waste, grease trap waste, chemical toilet waste, and/or septage by roadway, ship, rail, or other means.

(82) [(81)] Treat or treatment of sewage sludge--The preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

(83) [(82)] Treatment works--Either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

(84) [(83)] Unstabilized solids--Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

(85) [(84)] Unstable area--Land subject to natural or human induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

(86) [(85)] Vector attraction--The characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(87) [(86)] Volatile solids--The amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess oxygen.

(88) [(87)] Water treatment sludge--Sludge generated during the treatment of either surface water or groundwater for potable use, which is not an industrial solid waste as defined in §335.1 of this title (relating to Definitions).

(89) [(88)] Wetlands--Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303116

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 6, 2003

For further information, please call: (512) 239-0348

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CHAPTER 324. USED OIL STANDARDS
SUBCHAPTER A. USED OIL RECYCLING

30 TAC §324.3

The Texas Commission on Environmental Quality (commission) proposes an amendment to §324.3.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

On September 15, 1999, the commission granted a petition for rulemaking by Safety-Kleen Systems, Inc. for amendments to 30 TAC Chapter 312, concerning Sludge Use, Disposal, and Transportation; Chapter 324, concerning Used Oil Standards; and 30 TAC Chapter 330, concerning Municipal Solid Waste. This rulemaking is the result of that petition. The petition identified a conflict in commission rules where waste in waste management units containing recyclable used oil could be construed as being jointly regulated under Chapter 324 and Chapters 330 and 312.

On November 14, 2002, an advisory group meeting was held in Austin, Texas, to receive input from the regulated community and other interested entities on the proposed rule language, developed from the petition and the draft rule amendments to Chapters 312, 324, and 330. Entities registered in accordance with the Chapter 312 requirements voiced concern about alternative management of grit trap waste (i.e., the proposal to allow for commingling of grit trap waste regulated under Chapter 312 and used oil regulated under Chapter 324). Many of the advisory group members commented that there is no justification for a change to the current regulations. Advisory group members also commented that grit traps are not designed to accumulate oil and the existence of significant amounts of used oil found in grit traps indicates operational issues at facilities where such grit trap waste is found. The majority of the advisory group and other interested entities recommended changes to clarify that Chapter 312 does not apply to oily water mixtures in waste management units and that oil-water mixtures from waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission has identified language modifications that are needed in Chapters 312, 324, and 330 regarding this matter and, therefore, rule language modifications are being proposed concurrently for these chapters.

SECTION DISCUSSION

Proposed §324.3, Applicability, adds new paragraph (5) to indicate that oily water mixtures contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute or have been engineered for oil-water separation and are not plumbed to a municipal sanitary sewer system, must be managed solely under this chapter. Other tanks, sumps, and grit trapping waste management units that are plumbed to a municipal sanitary sewer must comply with the requirements found in Chapters 312 and 330. Throughout the section administrative changes

are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

FISCAL NOTE

Jan Washburn, Manager of Strategic Planning, has determined that, for the first five-year period the proposed rule is in effect, there will be no significant fiscal implications for the agency or any other unit of state or local government as a result of administration or enforcement of the proposed rule. There will be no fiscal impact to the agency.

Ms. Washburn also determined that, for each of the first five years the proposed rule is in effect, the public benefit anticipated from the enforcement of the proposed rule will be potentially increased readability of the rule by persons regulated by the agency. This should assist the regulated community in selecting the best management practice for their particular waste. Additionally, it is anticipated the change will assist agency Field Operations staff in enforcement of the rule. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rule. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rule. The commission has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The proposed rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposed rule amendment does not satisfy the definition of a major environmental rule. This rulemaking proposes to add regulatory language which states that oily water mixtures contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute or have been engineered for oil-water separation, and are not plumbed to a municipal sanitary sewer system; and may be managed solely under this chapter. Other tanks, sumps, and grit trapping waste management units that are plumbed to a municipal sanitary sewer must comply with the requirements found in Chapters 312 and 330. The amendment is not a major environmental rule because it is not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure.

In addition, a draft regulatory impact assessment is not required because the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code,

§2001.0225(a). The rulemaking does not exceed a standard set by federal law, but conforms with federal law. The rulemaking does not exceed an express requirement of state law because it conforms to the requirement under Texas Health and Safety Code (THSC), §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures. This rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This rulemaking does not adopt a rule solely under the general powers of the agency, but also under specific state law, namely THSC, §371.028. Finally, this rulemaking is not proposed on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. The commission invites public comment on the draft regulatory analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary analysis for this proposed rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to add regulatory language which states that oily water mixtures contained in waste management units such as tanks, fractionation tanks and sumps that meet the design requirements of the American Petroleum Institute or have been engineered for oil-water separation, and are not plumbed to a municipal sanitary sewer system; may be managed solely under this chapter. Other tanks, sumps, and grit trapping waste management units that are plumbed to a municipal sanitary sewer must comply with the requirements found in Chapters 312 and 330. The proposed rulemaking will substantially advance the stated purpose by adding a definition of grit trap in §312.8 and adding language in §312.2(g) specifying that waste in certain waste management units containing recyclable used oil is regulated under Chapter 324 and is not subject to Chapter 312. The promulgation and enforcement of this amended rule will not burden private real property nor adversely affect property values because the proposed rule amendment will explain that certain waste that contains recyclable used oil is being regulated solely under the used oil rules in Chapter 324. Therefore, the proposed rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rule under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rule include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of this rule will not violate (exceed) any standards

identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking defines grit trap and grit trap waste; indicates that Chapter 312 does not apply to oily water mixtures in waste management units; and indicates that oil-water mixtures from waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission invites public comment on the consistency determination of the proposed rule.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m. July 7, 2003, and should reference Rule Log Number 1999- 074-312-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the state, and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.011, which gives the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures.

The proposed amendment implements TWC, §5.103 and §5.105; and THSC, §361.024 and §371.028

§324.3. *Applicability.*

Applicability and exemptions from applicability will be as in 40 Code of Federal Regulations (CFR) [CFR] Part 279, Subpart B, and as clarified here.

(1) (No change.)

(2) Used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265. The requirement in 40 CFR Part 279 that refers to compliance with Part [Parts] 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in compliance with 40 CFR Part 264 or 265 [264/265], Subpart K.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10(b) (relating to Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per [30 TAC] §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for "ignitability only" can be mixed with used oil. However, the resultant mixture cannot exhibit the hazardous ignitability characteristic to manage it under this chapter and 40 CFR Part 279 rather than Chapter 335 of this title. The resultant mixture

formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics. The resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils or products is also a processor subject to 40 CFR Part 279, Subpart F (relating to Standards for Used Oil Processors and Re-refiners) and §324.12 of this title [chapter] (relating to Processors and Rerefiners).

(4) A used oil shall not be regulated until it is a spent material as defined in 40 CFR §261.1(c)(1) and [30 TAC] §335.17 of this title (relating to Special Definitions for Recyclable Materials and Non-hazardous Recyclable Materials).

(5) Oily water mixtures contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been engineered for oil-water separation and are not plumbed to a municipal sanitary sewer system must be managed solely under this chapter. Management of wastes from other tanks, sumps, and grit trapping waste management units that are plumbed to a municipal sanitary sewer must comply with the requirements in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) and Chapter 330 of this title (relating to Municipal Solid Waste).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303117

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 6, 2003

For further information, please call: (512) 239-0348



CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (commission) proposes amendments to §§330.2, 330.4, and 330.66.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On September 15, 1999, the commission granted a petition for rulemaking by Safety-Kleen Systems, Inc. for amendments to 30 TAC Chapter 312, concerning Sludge Use, Disposal, and Transportation; 30 TAC Chapter 324, concerning Used Oil Standards; and Chapter 330, concerning Municipal Solid Waste. This rulemaking is the result of that petition. The petition identified a conflict in commission rules where waste in waste management units containing recyclable used oil could be construed as being jointly regulated under Chapter 324 and Chapters 330 and 312.

On November 14, 2002, an advisory group meeting was held in Austin, Texas, to receive input from the regulated community and other interested entities on the proposed rule language, developed from the petition and the draft rule amendments to Chapters 312, 324, and 330. Entities registered in accordance with the Chapter 312 requirements voiced concern about alternative management of grit trap waste (i.e., the proposal to allow for commingling of grit trap waste regulated under Chapter 312

and used oil regulated under Chapter 324). Many of the advisory group members commented that there is no justification for a change to the current regulations. Advisory group members also commented that grit traps are not designed to accumulate oil and the existence of significant amounts of used oil found in grit traps indicates operational issues at facilities where such grit trap waste is found. The majority of the advisory group and other interested entities recommended changes to clarify that Chapter 312 does not apply to oily water mixtures in waste management units and that oil-water mixtures from waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission has identified language modifications that are needed in Chapters 312, 324, and 330 regarding this matter and, therefore, rule language modifications are being proposed concurrently for these chapters.

SECTION BY SECTION DISCUSSION

Throughout these sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §330.2, Definitions, adds the definition of grit trap in new paragraph (52); adds the definition of grit trap waste in new paragraph (53); rennumbers the subsequent paragraphs accordingly; and formats paragraph (3) to identify the referenced section titles. The commission also proposes to delete renumbered paragraph (137)(O) because the term "used oil" is addressed in Chapter 324.

Proposed §330.4, Permit Required, amends subsection (r) by requiring a separate permit or registration for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person who intends to conduct such activity shall comply with the regulatory requirements of Chapter 324.

Proposed §330.66, Liquid Waste Transfer Facility Design and Operation, amends subsection (a) to indicate that §330.66 does not apply to transfer facilities that handle only liquid wastes that contain recyclable used oil from oil/water separators which are regulated under Chapter 324.

FISCAL NOTE

Jan Washburn, Manager of Strategic Planning, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state or local government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency.

Ms. Washburn also determined that, for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of the proposed rules will be potentially increased readability of the rules by persons regulated by the agency. This should assist the regulated community in selecting the best management practice for their particular waste. Additionally, it is anticipated the change will assist agency Field Operations staff in enforcement of the rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The proposed rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposed rule amendments do not satisfy the definition of a major environmental rule. This rulemaking proposes to add regulatory language which states that oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been engineered for oil-water separation, are not regulated under Chapter 312. In addition, the proposed rules contain language stating that oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The amendments are not a major environmental rule because they are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure.

In addition, a draft regulatory impact assessment is not required because the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The rulemaking does not exceed a standard set by federal law, but conforms with federal law. The rulemaking does not exceed an express requirement of state law because it conforms to the requirement under Texas Health and Safety Code (THSC), §371.028. This rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This rulemaking does not adopt a rule solely under the general powers of the agency, but also under specific state law, namely THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures. Finally, this rulemaking is not proposed on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. The commission invites public comment on the draft regulatory analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary analysis for this proposed rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to explain that oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been engineered for oil-water separation are not regulated under Chapter 312. In addition, the proposed rules contain language stating that oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The

proposed rulemaking will substantially advance the stated purpose by adding a definition of grit trap in §312.8 and adding language in §312.2(g) specifying that waste in certain waste management units containing recyclable used oil (including mixtures containing, or contaminated with, used oil) is regulated under Chapter 324 and is not subject to Chapter 330. The promulgation and enforcement of these amended rules will not burden private real property nor adversely affect property values because the proposed rule amendments will merely specify that certain waste that contains recyclable used oil is being regulated solely under the used oil rules in Chapter 324. Therefore, the proposed rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking defines grit trap and grit trap waste and indicates that a separate permit or registration is not required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., July 7, 2003, and should reference Rule Log Number 1999- 074-312-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.2, §330.4

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the state, and to adopt rules repealing any statement of general applicability

that interprets law or policy; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.011, which gives the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures.

The proposed amendments implement TWC, §5.103 and §5.105; and THSC, §361.024 and §371.028

§330.2. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the feminine gender also include the masculine and neuter genders; words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this chapter, have the following meanings.

(1)-(2) (No change.)

(3) Active life--The period of operation beginning with the initial receipt of solid waste and ending at certification/completion of closure activities in accordance with §§330.250 - 330.253 of this title (relating to Applicability; Closure Requirements for MSWLF Units That Stop Receiving Waste Prior to October 19, 1991, and MSW Sites; Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1991, But Stop Receiving Waste Prior to October 9, 1993; and Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993, and MSW Sites [Closure and Post-Closure]).

(4)-(51) (No change.)

(52) Grit Trap--A unit/chamber that allows for the sedimentation of solids from an influent liquid stream by reducing the flow velocity of the influent liquid stream. In a grit trap, the inlet and the outlet are both located at the same level, at, or very near, the top of the unit/chamber; the outlet of the grit trap is connected to a sanitary sewer system. A grit trap is not designed to separate oil and water.

(53) Grit trap waste--Waste collected in a grit trap. Grit trap waste includes waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments. The term does not include material collected in an oil/water separator or in any other similar waste management unit designed to collect oil.

(54) [~~52~~] Groundwater--Water below the land surface in a zone of saturation.

(55) [~~53~~] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, 42 United States Code, §§6901 *et seq.*, as amended.

(56) [~~54~~] Holocene--The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

(57) [~~55~~] Household waste--Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from

households (including single and multiple residences, hotels[-] and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include yard waste or brush that is completely free of any household wastes.

(58) [(56)] Industrial hazardous waste--Hazardous waste determined to be of industrial origin.

(59) [(57)] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class I industrial solid waste or Class I waste is any industrial solid waste designated as Class I by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class 1 Waste Determination).

(B) Class II industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class I or Class III, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class III industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(60) [(58)] Inert material--A naturally occurring nonputrescible material that is essentially insoluble such as soil, dirt, clay, sand, gravel, and rock.

(61) [(59)] In situ--In natural or original position.

(62) [(60)] Karst terrain--An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(63) [(61)] Lateral expansion--A horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

(64) [(62)] Land application of solid waste--The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

(65) [(63)] Leachate--A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(66) [(64)] Lead--The metal element, atomic number 82, atomic weight 207.2, with the chemical symbol Pb.

(67) [(65)] Lead acid battery--A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

(68) [(66)] License--

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid

waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(69) [(67)] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(70) [(68)] Liquid waste--Any waste material that is determined to contain "free liquids" as defined by EPA Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(71) [(69)] Litter--Rubbish and putrescible waste.

(72) [(70)] Lower explosive limit--The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(73) [(71)] Man-made inert material--Those non-putrescible, essentially insoluble materials fabricated by man that are not included under the definition of rubbish.

(74) [(72)] Medical waste--Waste generated by health-care-related facilities and associated with health-care activities, not including garbage or rubbish generated from offices, kitchens, or other non-health-care activities. The term includes special waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions). The term does not include medical waste produced on farmland and ranchland as defined in Agriculture Code, §252.001(6) (Definitions - Farmland or ranchland), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants.

(75) [(73)] Monofill--A landfill or landfill trench into which only one type of waste is placed.

(76) [(74)] MSWLF--Municipal solid waste landfill facility.

(77) [(75)] Municipal hazardous waste--Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator of the EPA.

(78) [(76)] Municipal solid waste--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(79) [(77)] Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(80) [(78)] Municipal solid waste landfill unit--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be

publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(81) [(79)] Municipal solid waste site--A plot of ground designated or used for the processing, storage, or disposal of solid waste.

(82) [(80)] Navigable waters--The waters of the United States, including the territorial seas.

(83) [(84)] New municipal solid waste landfill unit--Any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

(84) [(82)] Nonpoint source--Any origin from which pollutants emanate in an unconfined and unchanneled manner, including, but not limited to, surface runoff and leachate seeps.

(85) [(83)] Non-RACM--Non-regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(86) [(84)] Nuisance--Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare.

(87) [(85)] Open burning--The combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(88) [(86)] Operate--To conduct, work, run, manage, or control.

(89) [(87)] Operating record--All plans, submittals, and correspondence for a municipal solid waste landfill facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(90) [(88)] Operation--A municipal solid waste site or facility is considered to be in operation from the date that solid waste is first received or deposited at the municipal solid waste site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(91) [(89)] Operator--The person(s) responsible for operating the facility or part of a facility.

(92) [(90)] Opposed case--A case when one or more parties appear, or make their appearance, in opposition to an application and are designated as opponent parties by the hearing examiner either at or before the public hearing on the application.

(93) [(94)] Other regulated medical waste--Medical waste that is not included within special waste from health care-related facilities but that is subject to special handling requirements within the generating facility by other state or federal agencies, excluding medical waste subject to 25 TAC Chapter 289 (concerning Radiation Control).

(94) [(92)] Owner--The person who owns a facility or part of a facility.

(95) [(93)] PCB--Polychlorinated biphenyl molecule.

(96) [(94)] Polychlorinated biphenyl waste(s)--Those polychlorinated biphenyls (PCBs) and PCB items that are subject to the disposal requirements of 40 Code of Federal Regulations (CFR) Part 761. Substances that are regulated by 40 CFR Part 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(97) [(95)] Permit--A written permit issued by the commission that, by its conditions, may authorize the owner or operator to construct, install, modify, or operate a specified municipal solid waste storage, processing, or disposal facility in accordance with specific limitations.

(98) [(96)] Point of compliance--A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the permitted facility.

(99) [(97)] Point source--Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(100) [(98)] Pollutant--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(101) [(99)] Pollution--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(102) [(100)] Poor foundation conditions--Areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a municipal solid waste landfill unit.

(103) [(101)] Population equivalent--The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards. For the purposes of these sections, the following population equivalents shall apply:

(A) 8,000 persons--20 tons per day or 60 cubic yards per day;

(B) 5,000 persons--12 1/2 tons or 37 1/2 cubic yards per day;

(C) 1,500 persons--3 3/4 tons or 11 1/4 cubic yards per day;

(D) 1,000 persons--225 pounds of wastewater treatment plant sludge per day (dry-weight basis).

(104) [(102)] Post-consumer waste--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 purposes of this subchapter, the term does not include industrial or hazardous waste.

(105) [(103)] Premises--A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(106) [(404)] Processing--Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize such waste, or to recover energy or material from the waste, or to render such waste nonhazardous or less hazardous; safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume. Unless the executive director determines that regulation of such activity under these rules is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, 42 United States Code, §§6901 *et seq.*, as amended.

(107) [(405)] Public highway--The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(108) [(406)] Putrescible waste--Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that is capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or is capable of providing food for or attracting birds, animals, and disease vectors.

(109) [(407)] Qualified groundwater scientist--A licensed geoscientist or licensed engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(110) [(408)] RACM--Regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61, as amended, includes: friable asbestos material, Category I nonfriable asbestos-containing material (ACM) that has become friable; Category I nonfriable ACM that will be, or has been, subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable ACM that has a high probability of becoming, or has become, crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(111) [(409)] Radioactive waste--Waste that requires specific licensing under Texas Health and Safety Code, Chapter 401, and the rules adopted by the commission under that law.

(112) [(410)] Recyclable material--A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that 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.

(113) [(411)] Recycling--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 use.

(114) [(412)] Refuse--Same as rubbish.

(115) [(413)] Registration--The act of filing information for specific solid waste management activities that do not require a permit, as determined by this chapter.

(116) [(414)] Regulated hazardous waste--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3, and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

(117) [(415)] Relevant point of compliance--See point of compliance.

(118) [(416)] Resource recovery--The recovery of material or energy from solid waste.

(119) [(417)] Resource recovery site--A solid waste processing site at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(120) [(418)] Rubbish--Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(121) [(419)] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(122) [(420)] Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(123) [(421)] Salvaging--The controlled removal of waste materials for utilization, recycling, or sale.

(124) [(422)] Saturated zone--That part of the earth's crust in which all voids are filled with water.

(125) [(423)] Scavenging--The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(126) [(424)] Scrap tire--Any tire that can no longer be used for its original intended purpose.

(127) [(425)] Seasonal high water table--The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a site.

(128) [(426)] Septage--The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(129) [(427)] Site--Same as facility.

(130) [(428)] Site development plan--A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(131) [(129)] Site operating plan--A document, prepared by the design engineer in collaboration with the site operator, that provides guidance to site management and operating personnel in sufficient detail to enable them to conduct day-to-day operations throughout the life of the site in a manner consistent with the engineer's design and the commission's regulations.

(132) [(130)] Site operator--The holder of, or the applicant for, a permit (or license) for a municipal solid waste site.

(133) [(131)] Sludge--Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(134) [(132)] Small municipal solid waste landfill--A municipal solid waste landfill at which less than 20 tons of municipal solid waste are disposed of daily based on an annual average.

(135) [(133)] Solid waste--Garbage, rubbish, refuse, sludge from a wastewater 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 does not include:

(A) 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 Texas Water Code, Chapter 26;

(B) 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

(C) 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 Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, as amended (42 United States Code, §§6901 *et seq.*).

(136) [(134)] Source-separated recyclable material--Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste, or transported in the same vehicle as municipal solid waste, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(137) [(135)] Special waste--Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under §§335.401 - 335.403 and 335.405 - 335.412 of this title (relating to Household Materials Which Could Be Classified as Hazardous Waste);

(B) Class I industrial nonhazardous waste not routinely collected with municipal solid waste;

(C) special waste from health-care-related facilities (refers to certain items of medical waste);

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers, used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR), Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals;

[(O) used oil;]

(O) [(P)] light ballasts and/or small capacitors containing polychlorinated biphenyl compounds;

(P) [(Q)] waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility permitted under this chapter;

(Q) [(R)] waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(R) ~~[(S)]~~ any waste stream other than household or commercial garbage, refuse, or rubbish;

(S) ~~[(T)]~~ lead acid storage batteries; and

(T) ~~[(U)]~~ used-oil filters from internal combustion engines.

(138) ~~[(136)]~~ Special waste from health care-related facilities--Includes animal waste, bulk human blood, blood products, body fluids, microbiological waste, pathological waste, and sharps as defined in 25 TAC §1.132 (concerning Definitions).

(139) ~~[(137)]~~ Stabilized sludges--Those sludges processed to significantly reduce pathogens, by processes specified in 40 Code of Federal Regulations, Part 257, Appendix II.

(140) ~~[(138)]~~ Storage--The holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere. Facilities established as a neighborhood collection point for only nonputrescible source-separated recyclable material, as a collection point for consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks, or for accumulation of used or scrap tires prior to transportation to a processing or disposal site are considered examples of storage facilities. Storage includes operation of pre-collection and post-collection as follows:

(A) pre-collection--that storage by the generator, normally on his premises, prior to initial collection;

(B) post-collection--that storage by a transporter or processor, at a processing site, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(141) ~~[(139)]~~ Storage battery--A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(142) ~~[(140)]~~ Store--To keep, hold, accumulate, or aggregate.

(143) ~~[(141)]~~ Structural components--Liners, leachate collections systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the municipal solid waste landfill that is necessary for protection of human health and the environment.

(144) ~~[(142)]~~ Surface impoundment--A facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, or lagoons.

(145) ~~[(143)]~~ Surface water--Surface water as included in water in the state.

(146) ~~[(144)]~~ Texas Civil Statutes--Vernon's Texas Revised Civil Statutes Annotated.

(147) ~~[(145)]~~ Transfer station--A fixed facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(148) ~~[(146)]~~ Transportation unit--A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

(149) ~~[(147)]~~ Transporter--A person who collects and transports solid waste; does not include a person transporting his or her household waste.

(150) ~~[(148)]~~ Trash--Same as Rubbish.

(151) ~~[(149)]~~ Treatment--Same as Processing.

(152) ~~[(150)]~~ Triple rinse--To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

(153) ~~[(151)]~~ Uncompacted waste--Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(154) ~~[(152)]~~ Unified soil classification system--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(155) ~~[(153)]~~ Unconfined water--Water that is not controlled or impeded in its direction or velocity.

(156) ~~[(154)]~~ Unit--Municipal solid waste landfill unit.

(157) ~~[(155)]~~ Unstable area--A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(158) ~~[(156)]~~ Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(159) ~~[(157)]~~ Vector--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(160) ~~[(158)]~~ Washout--The carrying away of solid waste by waters.

(161) ~~[(159)]~~ Waste management unit boundary--A vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(162) ~~[(160)]~~ Waste-separation/intermediate-processing center--A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.

(163) [(161)] Waste-separation/recycling facility--A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

(164) [(162)] Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(165) [(163)] Water table--The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

(166) [(164)] Waters of the United States--All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

(167) [(165)] Wetlands--As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards) and areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas.

(168) [(166)] Yard waste--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.

§330.4. Permit Required.

(a)-(c) (No change.)

(d) A permit is not required for an MSW transfer station facility that is used in the transfer of MSW to a solid waste processing or disposal facility from:

(1)-(3) (No change.)

(4) a transfer station located within the permitted boundaries of an MSW Type I, Type II, Type III, or Type IV facility as specified in §330.41 of this title (relating to Types of Municipal Solid Waste Sites [Facilities]).

(e) (No change.)

(f) Facilities must obtain a permit or registration as applicable under subsection (a), (d), or (q) of this section unless otherwise exempted under this chapter, or:

(1) the facility or site is used as:

(A)-(C) (No change.)

(D) a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide [citywide] cleanup campaigns and cleanup of rights-of-way or roadside parks; or

(2) (No change.)

(g)-(l) (No change.)

(m) Any change to a condition or term of an issued permit requires a permit amendment in accordance with §305.62 of this title (relating to Amendment) or a permit modification in accordance with §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications [Modification]). The owner or operator shall submit an amendment or modification application in accordance with the requirements contained in §§330.50 - 330.65 of this title to address the items covered by the requested change.

(n)-(q) (No change.)

(r) A permit is not required for an MSW transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less. Liquid waste transfer stations that will receive 32,000 gallons a day or less may operate if they notify the executive director 30 days prior to initiating operations and if the facility is designed and operated in accordance with the requirements of §330.66 of this title (relating to Liquid Waste Transfer Facility Design and Operation). Facilities that will receive over 32,000 gallons per day must apply for a permit. A separate permit or registration is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person who intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(s) A permit is not required for an MSW Type V processing facility that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes if:

(1) the facility can attain a 10% recovery of material for beneficial use from the incoming waste. Recovery of material for beneficial use is considered to be the recovery of fats, oils, greases, and the recovery of food solids for composting, but does not include the recovery of water;

(2)-(3) (No change.)

(t)-(w) (No change.)

(x) A major permit amendment, as defined by §305.62 of this title [(relating to Amendment)], is required to reopen a Type I, Type I-AE, Type IV, or Type IV-AE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable current state, federal, and local requirements, including the requirements of RCRA, Subtitle D [of the federal Resource Conservation and Recovery Act of 1976 (42 United States Code, §§6901 et seq.)] and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.51(a) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.61 of this title (relating to Land-Use Public Hearing). This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(y) A permit or registration is not required for disposal of the remains from an animal that dies in the care of a veterinarian licensed by the Texas State Board of Veterinary Medical Examiners where all of the following occur:

(1)-(8) (No change.)

(9) the disposal complies with §111.209 of this title (relating to ~~Exception~~ [Exceptions] for Disposal Fires).

(z) A permit by rule is granted for an animal crematory that meets the requirements of §330.75 of this title (relating to Animal Crematory Facility Design and Operational Requirements for Permitting by Rule). Facilities that do not meet all the requirements of §330.75 of this title require a permit under §330.51 of this title [~~relating to Permit Application for Municipal Solid Waste Facilities~~].

(aa) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303118

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 6, 2003

For further information, please call: (512) 239-0348



SUBCHAPTER E. PERMIT PROCEDURES

30 TAC §330.66

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the state, and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.011, which gives the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures.

The proposed amendment implements TWC, §5.103 and §5.105; and THSC, §361.024 and §371.028.

§330.66. *Liquid Waste Transfer Facility Design and Operation.*

(a) Applicability.

(1) This section shall apply to a municipal solid waste (MSW) management facility that handles only liquid waste and which is exempt from permit requirements under §330.4(r) of this title (relating to Permit Required). This section shall not apply to transfer facilities that handle only liquid wastes that contain recyclable used oil from oil/water separators which are regulated under Chapter 324 of this title (relating to Used Oil Standards).

(2)-(3) (No change.)

(4) Existing liquid waste transfer facilities must comply with applicable requirements of this section and must notify the Texas Commission on Environmental Quality (TCEQ) [~~Texas Natural Resource Conservation Commission (TNRCC)~~] of their operation within 30 days of the effective date of these regulations.

(5)-(6) (No change.)

(7) This section is applicable to liquid waste transfer facilities located on or at other TCEQ [~~TNRCC~~] authorized facilities.

(b) Public meeting. The owner or operator of each liquid waste transfer facility shall conduct a public meeting in the local area within 30 days of facility operation, or as determined by the executive director, to describe the proposed action to the general public. A onetime [~~one time~~] notice of the public meeting shall be provided by the facility owner or operator two weeks prior to the meeting in the format prescribed in Texas Health and Safety Code (THSC) [~~the Health and Safety Code~~], §361.0791(d) and (e) (relating to Public Meeting and Notice Requirements). Evidence that the meeting was held shall be submitted to the TCEQ [~~TNRCC~~] in the form of a copy of the meeting notice as published and a notarized statement from the facility owner or operator stating that the meeting was held and stating the meeting date and location. This meeting requirement is applicable to all liquid waste transfer facilities.

(c) Notification. The owner or operator shall notify the executive director in writing of the intent to operate a liquid waste transfer facility 30 days prior to the operation of the facility by completing a TCEQ form [~~TNRCC Form~~] entitled "Notice of Intent to Operate a Liquid Waste Transfer Facility," available from the TCEQ [~~TNRCC~~]. The facility will be issued a registration number by the TCEQ [~~TNRCC~~] upon receipt of the form [~~Form~~]. Documentation of the facility design and operation shall be maintained as follows.

(1)-(5) (No change.)

(6) Evidence of financial assurance. For fixed facilities only, evidence of assurance shall be submitted to the TCEQ [~~TNRCC~~] in accordance with Subchapter K of this chapter (relating to Closure, Post-Closure, and Corrective Action) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). A cost estimate of the cost to close the facility shall be submitted with the notice. The financial assurance document shall be submitted prior to facility operation. The financial assurance instrument will be released upon approval of the executive director.

(7) Statement of owner or operator. The following document shall be signed, notarized, and submitted with the notification form:

Figure: 30 TAC §330.66(c)(7)

(d) (No change.)

(e) General prohibitions. A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of liquid waste, or the use or operation of a liquid waste facility to store, process, or dispose of liquid waste, in violation of THSC, Chapter 361 [~~the Texas Solid Waste Disposal Act~~], or any regulations, rules, permit, license, order of the commission or in such a manner so as to cause:

(1)-(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 20, 2003.



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER J. STATE PARTICIPATION PROGRAM

31 TAC §§363.1002, 363.1003, 363.1006, 363.1007

The Texas Water Development Board (board) proposes amendments to 31 TAC Chapter 363, concerning the State Participation Program. Proposed amendments to §§363.1002, 363.1003, 363.1006 and 363.1007 relate to the administration and the level of financial investment of the State in projects eligible for funding from the State Participation program.

The proposed amendment to §363.1002 provides a definition of new water supply projects that identifies proposed projects which will create new, usable supplies of water. Proposed amendments to §363.1003 create two new paragraphs. Proposed new paragraph (1) authorizes the board to financially participate in up to 80% of the costs of a new water supply project. Proposed new paragraph (2) authorizes the board to financially participate in up to 50% of the costs of all other projects that are eligible for the State Participation Program. Proposed amendments to §363.1006 will amend the dates for application submission, for application rating, and for board consideration. Section 363.1007 is proposed for amendment to add a new rating criterion such that new water supply projects are entitled to receive 2 rating points.

Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these changes are in effect there will be no fiscal implications to state or local government as a result of enforcement and administration of the sections.

Ms. Callahan has also determined that for the first five years the changes as proposed are in effect the public benefit anticipated as a result of implementing the amended sections will be to provide an incentive for the construction of projects that will provide new sources of water for the burgeoning population of the state while continuing the state's historic role in participating in projects to increase their cost efficiency. Ms. Callahan has further determined there will be no increased economic cost to small businesses or individuals required to comply with the sections as proposed because the provisions apply only to political subdivisions applying for board assistance.

It is estimated that the rule amendments will not adversely affect local economies because the proposed changes relate only to the level of financial participation of the state in local projects.

Indeed, by the state financially contributing to these projects, the local economies should be positively affected.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Attorney, (512) 475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

Statutory authority: Water Code, §6.101.

Cross-reference to statute: Water Code, Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, E, and F.

§363.1002. Definitions of Terms.

The following word and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) New water supply project--A project which will create new, usable water supply through the construction of a reservoir, dam, stormwater retention basin, or the development of conservation or innovative technologies including, but not limited to, desalinization, demineralization, other advanced water treatment practices, floodwater harvesting, or aquifer storage and recovery.

§363.1003. Board Participation.

Unless otherwise directed by legislation, the board will only use the State Participation Accounts of the Texas Water Development Fund I or the Texas Water Development Fund II to provide financial assistance for all or a part of the cost to construct the excess capacity of [~~a proposed project where~~]:

(1) an eligible new water supply project where:

(A) [~~(1)~~] at least 20% of the total facility capacity of the proposed project will serve existing need, or

(B) [~~(2)~~] the applicant will finance at least 20% of the total project cost from sources other than the State Participation Account; and[-]

(2) all other projects eligible for state participation where:

(A) at least 50% of the total facility capacity of the proposed project will serve existing need, or

(B) the applicant will finance at least 50% of the total project cost from sources other than the State Participation Account.

§363.1006. Priority Rating System.

(a) The executive administrator will rate all applications not previously considered by the board on March 1 and October 1 of each year. An application must be submitted by February 1 to be rated on March 1. An application must be submitted by September 1 to be rated on October 1. The executive administrator will provide the ratings to the board in March and October of each year. The board may consider rated applications at its March or October board meetings or may postpone consideration of any rated applications at its discretion. [The board will consider applications for financial assistance from the State Participation Accounts at its meetings in March and October of each year. An application may be submitted at any time. To be considered by the board, and rated by the executive administrator, the application must be received no later than 45 days before the board meeting date at which it is to be presented to the board.]

(b) - (c) (No change.)

§363.1007. *Rating Criteria.*

(a) The factors to be used by the executive administrator to rate projects seeking financial assistance from the State Participation Account, and the points assigned to each factor, shall be as follows:

(1) - (6) (No change.)

(7) New water supply projects will receive 2 points.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 21, 2003.

TRD-200303164

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: July 16, 2003

For further information, please call: (512) 463-7981



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER M. INTERCEPT OF INSURANCE CLAIMS

1 TAC §§55.601 - 55.606

The Office of the Attorney General adopts new Subchapter M, Intercept of Insurance Claims, §§55.601 - 55.606, with changes, due to grammatic and typographical errors, to the proposed text as published in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1031).

The new sections address Intercept of Insurance Claims.

Section 55.601 tasks the Office of the Attorney General with establishing, by rule, a pilot program.

Section 55.602 explains how the Child Support Lien Network is setup.

Section 55.603 explains the process for data matches.

Section 55.604 explains how to register for access to the database.

Section 55.605 explains protection for the insurance companies.

Section 55.606 explains Title IV-D confidentiality and security.

No comments have been received regarding the new sections.

The new rules are adopted under Texas Family Code §231.015.

The new sections are adopted under the authority of Texas Family Code §231.015, which is affected by Federal law (42 USC 666).

§55.601. *Scope.*

Section 231.015 of the Family Code tasks the Child Support Division of the Office of the Attorney General, in consultation with the Texas Department of Insurance and representatives of the insurance industry, with establishing by rule a pilot program whereby insurance companies may voluntarily cooperate with the Child Support Division in matching the names of those individuals who are or may be due liability insurance settlements or awards with the names of obligors who owe past-due child support. When such an individual is identified, the Child Support Division will file a child support lien on the pending settlement or award to secure the payment of past-due support. This subchapter explains how the matching process and the lien process work.

§55.602. *Child Support Lien Network.*

The Office of the Attorney General has joined the Child Support Lien Network (CSLN), a consortium of State child support enforcement agencies headed by the State of Rhode Island and Providence Plantations. Each of the participating States provides CSLN with a periodically updated list of its child support obligors. CSLN provides participating insurance companies with two methods of matching a pending settlement or award: an automatic data match, or an interactive lookup. The automatic data match is preferred because insurance companies need only take action on those claims that electronically match to a child support obligor.

§55.603. *Automated Data Match.*

(a) An insurance company can conduct an automatic electronic interface of its pending claims against the list of child support obligors through Insurance Service Office (ISO). ISO is an industry service provider, headquartered in New Jersey, which maintains a claim search system to assist subscribing insurance companies in fraud detection.

(b) An insurance company desiring to participate in the automatic data matching process must give ISO permission to match its claim data with CSLN. ISO may be contacted at (800) 877-4476 or by email at njsupport@iso.com.

(c) CSLN matches its list of child support obligors daily against the ISO claim data.

(d) A participating insurance company will receive a notice of child support lien (or wage withholding instrument for a workers' compensation claim) only on those claims that the company has registered with ISO and that match the name of an obligor who owes past-due child support. This allows the insurance company to focus work efforts on only those claimants that actually require child support enforcement activity.

§55.604. *Interactive Lookup.*

(a) An insurance company may choose to check the name of an individual insurance claimant to see if there are outstanding child support obligations by accessing the CSLN database of child support obligors.

(b) To register for access to this database, a company must:

- (1) go to the Office of the Attorney General's child support lien web page at <http://www.childsupportliens.com/TX/>;
- (2) click on the ARegister@ label in the left margin and complete and electronically submit the registration form; and
- (3) print, sign and fax to CSLN at 888-430-6907 a copy of the confidentiality statement.

(c) Once the insurance company registration information has been reviewed and the signed confidentiality statement has been received, secure access to the database of child support obligors will be approved. The company will be notified via e-mail of access approval.

This notice will include the user ID that has been assigned, the web site address, and basic instructions.

(d) Insurance companies are encouraged to query the CSLN database of child support obligors as early as possible in the claims process, but not later than 30 days before a claim settlement, if possible.

(e) The insurance company receives immediate notification of the status of the match.

(1) If there is no match, the insurance company is informed.

(2) If there is a positive match, the insurance company is informed and provided the basic match data.

(3) If there are multiple possible matches within one state, the insurance company is asked to call CSLN to identify the correct obligor.

(4) If there are multiple possible matches within more than one state, the insurance company is notified that CSLN will work with the insurance company and the affected states to determine the appropriate course of action.

(f) When an interactive match occurs, CSLN notifies the State child support enforcement agency of a match. The State child support agency will send a notice of child support lien (or, in the case of a worker's compensation claim, a wage withholding instrument) to the company.

§55.605. *Protection from Liability of Insurance Company for Disclosure of Information.*

(a) An insurance company that provides information or otherwise responds to a notice of child support lien or levy under Subchapter G, Chapter 157, or acts in good faith to comply with procedures established in the pilot program under this section 231.015 is not liable for those acts under any law to any person.

(b) The federal Social Security Act (42 USC 666(a)(17)(C)(ii)) provides that a financial institution shall not be liable under any federal or state law to any person for encumbering or surrendering any assets it holds in response to a notice of lien or levy issued by the state child support enforcement agency.

§55.606. *Confidentiality and Security.*

(a) The Title IV-D agency shall consider any information received from an insurance company as confidential. Such information shall be used or disclosed by the Child Support Division only for the purpose of collecting past-due child support or for other purposes as enumerated in subsection (c) of Family Code §231.108.

(b) In accordance with section 453 of the federal Social Security Act, any information provided by the Child Support Division to an insurance company, or its designated agent, for the purpose of conducting a data match may not be used by the institution or its agent for any other purpose and may not be disclosed to any person except to the extent necessary to conduct the data match. The insurance company or its agent shall destroy or erase all information provided to the company after completion of a data match. This subsection does not apply to data contained in a child support lien or other encumbering instrument received from the Child Support Division after the data match process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

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For information regarding this publication, please call A.G. Younger, Agency Liaison, at (512) 463-2110

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TITLE 7. BANKING AND SECURITIES

**PART 6. CREDIT UNION
DEPARTMENT**

**CHAPTER 91. CHARTERING, OPERATIONS,
MERGERS, LIQUIDATIONS**

**SUBCHAPTER B. ORGANIZATION
PROCEDURES**

7 TAC §91.210

The Texas Credit Union Commission adopts the amendments to §91.210, concerning foreign credit unions without changes to the text published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3010) and will not be republished.

The amendments make several changes. First, it defines local service area for foreign credit unions. Secondly it allows a foreign credit union to apply to expand its field of membership to include any group with a community of interest (including geographic) within its local service area and automatically includes certain groups in their entirety, even though some of the potential members may be located outside the credit union's local service area under specified conditions. Finally, a new subsection was added to safeguard against a foreign credit union using its Texas office(s) as share/deposit production office(s).

Two comment letters were received on this proposal. TruWest Credit Union wholly supports the proposed changes to 91.210. Star One Credit Union supports most of the proposed changes to the rule, but they do not support the change of the standard of "conveniently served from its office" to "local service area", stating that both standards are applied only to foreign credit unions and therefore discriminatory. They also do not support the addition of subsection (k), requiring that certain loan to deposit ratios be maintained to prevent foreign credit unions from becoming share/deposit production offices, stating that it is "arbitrary, vague and unfair". The Commission disagrees that the proposed rule, with the definition of "local service area", is discriminatory against foreign credit unions. Although the exact phrase, "local service area" is not currently used in Section 91.301, dealing with state credit union field of membership, geographic limitations must be included for all types of field of membership expansions by state credit unions and a similar standard of "meeting the convenience and needs of members" must also be met. Credit unions are the only financial institutions in this State that are not allowed to serve the general public, but whose membership must meet eligibility requirements. The Commission believes that the "local service area" test properly balances the public interest of maintaining the integrity of the member-based system while promoting competition. The prohibition on foreign credit unions using the Credit Union Act's interstate branching authority primarily for the purpose of share/deposit production is

based on sound public policy considerations and is not unduly burdensome on foreign credit unions. The intent of subsection (k) is to ensure that the interstate branching authority would not result in the taking of shares/deposits from Texas communities of interest without the foreign credit union reasonably helping to meet the credit needs of those communities. The proposal provides a simple process to test compliance with the prohibition. The process involves a loan-to-deposit ratio screen, which is designed to measure the lending and deposit activities of the foreign credit union. The screen compares the foreign credit union's Texas loan-to-deposit ratio to the aggregate loan-to-deposit ratio for all Texas credit unions. If the foreign credit union's Texas loan-to-deposit ratio is at least one-half of the aggregate Texas loan-to-deposit ratio, the foreign credit union passes the evaluation and no further review is required. It is anticipated that existing data, which should be readily available at foreign credit unions, will be used to determine its Texas loan-to-deposit ratio. The proposal will not impose any substantive paperwork or regulatory reporting requirements on foreign credit unions.

The amendment to the rule is adopted as a result of interested persons petitioning the Commission to amend the rule to change the current language in subsection (i) because it limited a foreign credit union's growth outside of their service area and foreign credit unions were not on parity with state-chartered credit unions for field of membership expansions.

The amendment is adopted under the provision of the Texas Finance Code, §122.013, that is interpreted as authorizing the Credit Union Commission to adopt rules that govern foreign credit union operations in this state.

The specific section affected by the amendment is Texas Finance Code, §122.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200303107

Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



SUBCHAPTER D. POWERS OF CREDIT UNIONS

7 TAC §91.403

The Texas Credit Union Commission adopts the amendments to §91.403, concerning federal parity with respect to offering debt cancellation products without changes to the text as published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3010) and will not be republished.

The amendments establish additional standards governing debt cancellation products in order to ensure that credit unions provide such products consistent with safe and sound credit union practices. Specifically, the amendments add three new subsections. New subsection (b) imposes additional standards that apply to credit unions offering debt cancellation products. These

standards prohibit a credit union from engaging in any form of self-insurance to cover any loss resulting from these products; from tying the approval or terms of an extension of credit to a member's purchase of a product; and requires the product provide for the refunding of, or credit to, the member any unearned fees resulting from the termination of the member's participation in the product. New subsection (c) requires a credit union to notify the commissioner of its intention to offer debt cancellation products and prescribes the information that must be included in the notification. And finally, new subsection (d) imposes a new duty on the credit union's board of directors to establish and maintain written policies concerning debt cancellation products. The amendments also remove references to a guaranteed auto protection program and improve the definition of debt cancellation product.

The Credit Union Department has long recognized that state credit unions may provide debt cancellation contracts as permissible credit union products. The Credit Union Commission officially granted state credit unions parity with federal credit unions relating to the sale of guaranteed auto protection programs and debt cancellation contracts in 1999 based on the regulations of the National Credit Union Administration at 12 C.F.R. Part 721.3(g) which expressly noted debt cancellation and debt suspension agreements as permissible loan-related products. In promulgating §91.403 the Commission codified the Department's position and specifically stated the authority of state credit unions under Texas Finance Code Section 123.003 to enter into debt cancellation products as authorized credit union loan terms and to charge a fee for these products.

One comment from MCT Credit Union was received, which objected to the inclusion of subsection (b) (2), stating that they had an "incentive" program that did alter the terms of credit to members who purchased debt cancellation products and they felt that it was a benefit to their members and they should be allowed to continue this practice. The Commission disagrees with the commenter and believes that the proposal establishes important safeguards to protect against member confusion and areas of potential member abuse. A credit union's authority to deny a member's request for credit gives the credit union a unique ability to seek to coerce members to purchase a debt cancellation product. Therefore, the Commission considers it inappropriate for a credit union to condition the granting of a loan or its terms on the member's purchase of a debt cancellation product. In addition, the Commission believes that the proposal's express prohibition on tying a debt cancellation product to loan terms makes it clear that the choice of purchasing a debt cancellation product is left exclusively to the member.

The amendment is adopted under the Texas Finance Code §15.402 and §123.003. The Commission interprets §15.402 to authorize the Commission to adopt reasonable rules, and the Commission interprets §123.003 to authorize the Commission to adopt rules that authorize a state credit union to engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

The specific section affected by this amendment is Texas Finance Code §124.001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES
SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §9.10

The Railroad Commission of Texas adopts amendments to §9.10, relating to Rules Examination, without changes to the version published in the March 28, 2003, issue of the *Texas Register* (28 TexReg 2684) and will not be republished. The purpose of the amendments is to establish requirements for notifying individuals taking any LP-gas examination of the results of that examination as required by Senate Bill (SB) 310, 77th Legislature (2001), as codified at Texas Natural Resources Code, §113.087(i)-(k).

The adopted amendment to §9.10(c) mandates that the Commission must notify an individual within 30 days of the date an individual takes an examination of the results of the examination. New §9.10(c)(1) provides that if an examination is graded or reviewed by a testing service, the Commission shall notify the individual of the examination results within 14 days of the date the Commission receives the results from the testing service. Subsection (c)(1) further provides that if the notice of the examination results will be delayed for longer than 90 days after the examination date, the Commission shall notify the individual of the reason for the delay before the 90th day. Subsection (c)(1) further provides that the Commission may require a testing service to notify an individual of the individual's examination results. New §9.10(c)(2) mandates that successful completion of a required examination is credited to and accrues to the individual who took the exam. Subsection (d), currently designated as subsection (c), includes new wording to require that the Commission, upon written request of an individual failing an examination, shall provide that individual with an analysis of the individual's performance on that examination.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.087(i)-(k), as added by Section 57, SB 310, 77th Legislature (2001), which mandates the Commission to notify individuals taking an examination within 30 days, notify individuals by the 90th day of the reason for delay in furnishing exam results, and furnish a performance analysis upon written request.

Statutory authority: Texas Natural Resources Code, Chapter 113, §§113.051 and 113.087(i)-(k), as added by SB 310, 77th Legislature (2001).

Cross reference to statute: Texas Natural Resources Code, Chapter 113.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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CHAPTER 12. COAL MINING REGULATIONS

The Railroad Commission of Texas adopts amendments to §12.3, relating to Definitions; the repeal of §12.71, relating to Areas Where Mining is Prohibited or Limited; new §12.71, relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited; the repeal of §12.72, relating to Procedures; new §12.72, relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations; the repeal of §12.73, relating to Responsibility; new §12.73, relating to Commission Obligations at Time of Permit Application Review; new §12.74, relating to Responsibility; and amendments to §12.77, relating to Applicability and Restrictions on Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations; §12.111, relating to General Requirements: Exploration That Will Remove More Than 250 Tons of Coal or That Will Occur on Land Designated as Unsuitable for Surface Coal Mining Operations; §12.112, relating to Applications: Approval or Disapproval of Exploration of More Than 250 Tons of Coal or That Will Occur on Land Designated as Unsuitable for Surface Coal Mining Operations; §12.113, relating to Applications: Notice and Hearing for Exploration of More Than 250 Tons; §12.118, relating to Relationship to Areas Designated Unsuitable for Mining; §12.151, relating to Protection of Public Parks and Historic Places; §12.152, relating to Relocation or Use of Public Roads; §12.158, relating to Relationship to Areas Designated Unsuitable for Mining; §12.191, Relating to Protection of Public Parks and Historic Places; §12.192, relating to Relocation or Use of Public Roads; §12.207, relating to Public Notices of Filing of Permit Applications; and §12.216, relating to Criteria for Permit Approval or Denial, without changes to the versions published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2835).

The Commission repeals §12.71, relating to Areas Where Mining is Prohibited, and replaces it with new §12.71, relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited. New §12.71 adds subsection (b) which is an exception for existing operations to areas where surface coal mining operations are prohibited or limited.

The Commission repeals §12.72, relating to Procedures for Permit Application, and replaces it with §12.72, relating to Procedures for Compatibility Findings, Public Road Closures and Relocations, Buffer Zones, and Valid Existing Rights Determinations. New subsection (c) explains which agency determines if there is a valid existing right and the process for determining if a valid existing right exists.

The Commission repeals §12.73, relating to Responsibility, and replaces it with new §12.73, relating to Commission Obligations at Time of Permit Application Review. New §12.73 establishes the criteria to be used for rejection of any portion of an application containing protected lands and establishes procedures for joint approval of mining operations that will adversely affect publicly owned lands

The Commission adopts new §12.74, relating to Responsibility, which is merely a renumbering of current §12.73, relating to Responsibility.

The Commission adopts amendments to §12.3 to remove the definition of Surface coal mining operations, which exist on the date of enactment, and to parallel the federal regulation 30 Code of Federal Regulations (CFR) §761.5. The adopted change to the definition of "valid existing rights" is intended to clarify the circumstances under which a valid existing right exists. As stated in Texas Natural Resources Code §134.012(d), the Commission is not authorized to adjudicate property title or property rights disputes. To demonstrate that a valid existing right exists, except for usage or construction of roads, a person must document that property rights existed on August 3, 1977, and must document compliance with one of the two standards listed in paragraph (187)(B). The two standards are the good faith/permits standard and the needed for and adjacent standard. Other definitions are renumbered as applicable.

The Commission amends §12.77, relating to exploration on land designated as unsuitable for Surface coal mining operations, by clarifying that lands listed under §12.71(a), relating to areas where Surface coal mining operations are prohibited or limited, are subject to designation as unsuitable for surface coal mining.

The Commission amends §12.111 and §12.112 to specify that the applicant shall demonstrate that the proposed exploration activities are designed to minimize interference with the value for which the lands were designated as unsuitable for Surface coal mining operations and document consultation with the owner of the feature that causes the land to come under §12.71(a) of this title.

The Commission amends §12.113 to add that notice also be sent to commenters; amends §12.118 to include areas within 100 feet of a public road; and amends §§12.151, 12.152, 12.158, 12.191, 12.192, 12.207, and 12.216, to conform rule citations to other adopted changes.

The Commission received no comments on the proposed repeals, new sections, and amendments.

SUBCHAPTER A. GENERAL

DIVISION 1. GENERAL

16 TAC §12.3

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295

SUBCHAPTER F. LANDS UNSUITABLE FOR MINING

DIVISION 2. AREAS DESIGNATED BY ACT OF CONGRESS

16 TAC §12.71, §12.72

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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16 TAC §12.71, §12.72

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

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DIVISION 3. CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

16 TAC §12.73

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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16 TAC §§12.73, §12.74

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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16 TAC §12.77

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

DIVISION 3. GENERAL REQUIREMENTS FOR COAL EXPLORATION

16 TAC §§12.111 - 12.113

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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Mary Ross McDonald
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DIVISION 4. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION, PART I

16 TAC §12.118

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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DIVISION 6. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

16 TAC §12.151, §12.152

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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DIVISION 7. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION, PART II

16 TAC §12.158

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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Mary Ross McDonald
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DIVISION 9. UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

16 TAC §12.191, §12.192

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

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DIVISION 11. REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

16 TAC §12.207, §12.216

The Commission adopts the repeals, new sections, and amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.013.

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CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG) AND LIQUEFIED NATURAL GAS (LNG) SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §13.70

The Railroad Commission of Texas adopts amendments to §13.70, relating to Examination Requirements and Renewals, without changes to the version published in the March 28, 2003, issue of the *Texas Register* (28 TexReg 2687) and will not be republished. The purpose of the amendments is to establish requirements for notifying individuals taking any CNG examination of the results of that examination as required by Senate Bill (SB) 310, 77th Legislature (2001), as codified at Texas Natural Resources Code, §116.034(d)-(g).

The adopted amendment to §13.70(a)(4) corrects the number of the form that an individual must file in order to take the rules examination given by the Commission. New §13.70(a)(5) mandates that the Commission must notify an individual within 30 days of the date an individual takes an examination of the results of the examination. New §13.70(a)(5)(A) provides that if an examination is graded or reviewed by a testing service, the Commission shall notify the individual of the examination results within 14 days of the date the Commission receives the results from the testing service. Subsection (a)(5)(A) further provides that if the notice of the examination results will be delayed for longer than 90 days after the examination date, the Commission shall notify the individual of the reason for the delay before the 90th day. Subsection (a)(5)(A) further provides that the Commission may require a testing service to notify an individual of the individual's examination results. Section 13.70(a)(5)(C), redesignated from current subsection (a)(6), includes new wording to require that the Commission, upon written request of an individual failing an examination, shall provide that individual with an analysis of the individual's performance on that examination. Subsection (a)(7) is deleted because the Commission's examination is updated periodically, rather than only once a year.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under the Texas Natural Resources Code, §§116.012, which authorizes the Commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas, and §116.034(d)-(g), as added by Section 57, SB 310, 77th Legislature (2001), which mandates the Commission to notify individuals taking an examination within 30 days, notify individuals by the 90th day of the reason for delay in furnishing exam results, and furnish a performance analysis upon written request.

Statutory authority: Texas Natural Resources Code, Chapter 116, §§116.012 and 116.034(d)-(g), as added by SB 310, 77th Legislature (2001)

Cross reference to statute: Texas Natural Resources Code, Chapter 116.

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Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES
APPLICABLE TO ELECTRIC SERVICE
PROVIDERS
SUBCHAPTER J. COSTS, RATES AND
TARIFFS
DIVISION 2. RECOVERY OF STRANDED
COSTS

16 TAC §25.264

The Public Utility Commission of Texas (commission) adopts new §25.264, relating to Quantification of Stranded Costs of Nuclear Generation Assets, with changes to the proposed text as published in the April 4, 2003 issue of the *Texas Register* (28 TexReg 2849). The new rule clarifies the methods that are available to an electric utility and its affiliated power generation company to quantify the market value of its nuclear generation assets for the purpose of determining its stranded costs under the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapter 39 (Vernon 1998, Supplement 2003) (PURA). This rule is adopted under Project Number 27464.

In Docket Number 27120, *Petition of Central Power and Light Company for Declaratory Order and Plan of Divestiture*, the commission considered a request by AEP Texas Central Company (AEP) (previously known as Central Power and Light Company) for a declaratory order interpreting the provisions of PURA Chapter 39 related to the stranded cost calculation for nuclear assets. AEP indicated that it intended to sell all of its generating assets, including its nuclear assets, because it felt that a sale would produce the highest value for its assets, relative to the other market-based methods of determining value, and thus, would result in the lowest amount of stranded costs that would have to be recovered from ratepayers. However, AEP was concerned that PURA could be interpreted to prohibit the sale of nuclear assets, and AEP would be required to establish the value of those assets using an administrative method (the commission's "excess costs over market" or ECOM method). The sale is not likely to recover the full value of the nuclear generation assets, so AEP would need to recover the remaining amount of its investment, or stranded costs, from ratepayers. However, if the commission requires the use of the ECOM method, it is likely that it would produce a result indicating that AEP had minimal, if any, stranded costs. Thus, if AEP sold its nuclear assets but the commission interpreted PURA as requiring the use of the ECOM method, AEP would be placed in a position where it would be unable to recoup the full value of its investment in its nuclear generation assets. AEP requested a declaratory order from the commission concerning the proper interpretation of PURA so that it could determine whether to sell its nuclear generation assets. In the absence of an interpretation, AEP indicated that it would use a different method of establishing the value of its nuclear assets. This would avoid the possible application of the ECOM method, but it would also likely generate a lower value for the nuclear assets and increase the amount of stranded costs to be collected from ratepayers. After briefing by the parties, the commission determined that it was more appropriate to address the issue in a rulemaking proceeding and established this project to interpret the applicable provisions of PURA and eliminate the uncertainty concerning whether the sale of assets method can be used to determine the market value, and thus the amount of resulting stranded costs, of nuclear generation assets.

This rule is necessary to firmly establish the methods that may be employed to determine the stranded cost of nuclear power generation assets. In addition, the rule is needed to serve the public interest and legislative policy stating that utilities with uneconomic generation-related assets should be allowed to recover the reasonable excess costs over market value of those assets. In order to assure that the market value of nuclear generation assets is properly quantified in a manner that reduces, to the extent possible, the amount of excess costs over market value for those assets, the rule clarifies that a public utility and its affiliated companies may use any of the valuation methods specified in PURA §39.262(h) and (i) to quantify the market value of nuclear generation assets.

Although this rulemaking project was initiated in response to an issue raised by AEP concerning its individual stranded costs, the commission determines that the public interest is best served by the adoption of a rule of general applicability to address the proper interpretation of PURA. In enacting Chapter 39 of PURA, the Legislature stated, in PURA §39.001(a), that it is the public policy "to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry." The Legislature also found that it is in the public interest to allow public utilities to collect their stranded costs. Chapter 39 contains provisions directing the commission to determine the utilities' initial amounts of stranded costs and to establish a competition transition charge to enable the utilities to recover stranded costs through rates charged to ratepayers. After competition has been established for two years, the commission is to conduct a true-up proceeding to determine the utilities' final amounts of stranded costs and to increase, decrease, or eliminate the competition transition charge to reflect those final amounts. Under this legislative process, the determination of stranded costs is a matter that affects both the utilities and their ratepayers. This rule, establishing the methods for quantification of stranded costs of nuclear generating assets, will also affect both the utilities and their ratepayers. While the number of utilities with nuclear generating assets may be limited, they have numerous customers in many different customer classes that will be affected by the commission's decision in this project. The commission finds that it is appropriate to adopt the rule in order to properly interpret potentially ambiguous provisions of PURA and to implement the legislative policies concerning the recovery of stranded costs. Because of the impact of the rule on the interests of the public at large as well as the impact on utilities, the commission concludes that this rule is a statement of general applicability that implements and interprets law and policy.

The rule is proposed as part of the commission's efforts to adopt competition rules to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry under PURA Chapter 39. As noted previously, Chapter 39 of PURA delegated many important functions to the commission in order to "protect the public interest during the transition to and in the establishment of a fully competitive electric power industry." Among those functions was the determination of a utility's stranded costs in a manner that allows the utilities to collect those costs while also protecting ratepayers from excessive and unreasonable charges. Simultaneously, the commission must implement the legislative directive to "encourage full and fair competition among all providers of electricity." The commission finds that balancing these concerns related to the development of a competitive market requires that the commission adopt a rule interpreting the methods by which a utility may

quantify the stranded costs of its nuclear generation assets. Accordingly, the commission concludes that this rule is a competition rule under PURA Chapter 39.

A public hearing on the proposed section was held at commission offices on Tuesday, April 29, 2003, at 9:00 a.m. Representatives from American Electric Power Companies (AEP), Centerpoint Energy (Centerpoint), City Public Service of San Antonio (San Antonio), Texas Industrial Energy Consumers (TIEC), the State of Texas, by and through the Office of the Attorney General, Customer Protection Division, Public Agency Representation Section (State) and Vinson & Elkins attended the hearing. Although public comment was invited, no person provided comments at the public hearing.

Comments on proposed §25.264

The commission received written comments on the proposed new section only from AEP. AEP generally supported the rule and agreed that it correctly interprets and prescribes the PURA provisions concerning the quantification of stranded costs of nuclear generation assets. AEP also made recommendations for certain revisions to the rule and for clarifications of the applicability and justification for the rule.

AEP agreed that the proposed rule is a rule of "general applicability" but requested that the commission explain in more detail why this is a rule of general applicability. AEP noted that the Administrative Procedure Act defines a "rule" as "a state agency statement of general applicability that implements, interprets, or prescribes law or policy." AEP cited to various court cases for the propositions that a rule can be of general applicability even if it applies to only a limited group and that rules, like legislation are written to apply to the community at large, even though they concern only a small number of companies. Based upon this precedent, AEP asserted that the proposed rule is a rule of general applicability.

The commission agrees with AEP and has added language to previous portions of the preamble explaining that the rule is a statement of general applicability that implements, interprets, and prescribes the law as established by PURA and supports the public policies established by the Legislature when it adopted PURA Chapter 39.

AEP noted that, in the preamble to the proposed rule, the commission had indicated that the proposed rule was a competition rule, adopted pursuant to the commission's efforts to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry under Chapter 39 of PURA. AEP agreed with the commission's declarations in the proposed rule preamble, but requested that the commission re-affirm this declaration in the preamble of the order adopting the rule.

The commission agrees with AEP's request and has included language in other portions of the preamble to re-affirm that this rule is being adopted pursuant to the commission's efforts to implement competition under PURA Chapter 39.

AEP commented that the proposed rule is a correct interpretation of the statutory language as well as the legislative intent underlying PURA §39.262, as it applies to the valuation of stranded costs of nuclear generation assets. AEP argued that, in accordance with applicable standards of statutory construction, the commission must determine and implement the intent of the Legislature and that the best indication of legislative intent is the language of the statute. AEP cited the language of §39.262(h)(1)

as allowing the power generation company (PGC) to sell "some or all" of the generation assets of the company, without making any exception or exclusion for nuclear assets in that section. The language of §39.262(i) requiring the PGC to place its "remaining" assets in transferee corporations or value the nuclear assets using the ECOM method, should be read as referring to the assets "that have been left behind after the company has exercised its right to sell some of them." AEP also noted that the definition of "market value" contained in §39.251(4) contemplates that at least "certain nuclear assets" can have a market value that is determined by being "sold in a bona fide third-party transaction", i.e., a sale of assets.

In its comments, AEP also argued that interpretation of PURA contained in the proposed rule was consistent with Legislative policy. AEP asserted that the Legislature expressed a clear preference for market valuations of potentially stranded costs. Allowing the utility to use any of the proposed market valuation methods, including the sale of assets, was more consistent with this policy. AEP indicated that the commission should favor an interpretation that favors making all of the market valuation methods available so that each utility could make the choice of the best market valuation method to address its individual circumstances.

AEP contended that a review of the legislative history related to Chapter 39, which was added to PURA by Senate Bill 7 (Act of May 21, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543) (SB 7), also supported allowing the utility to use any of the market valuation methods for nuclear assets. AEP noted that the Legislature supported the general concept of a market methodology as the best way to determine stranded costs. The Legislature was aware of concerns that a forced sale of the nuclear assets could lead to a "fire sale" due to the reduced demand for such assets at the time the legislation was pending. During various drafts and revisions, the Legislature generally increased the reasonable options available to the utilities. AEP reasoned that, if there had been a legislative intent to prohibit the sale of nuclear assets, that intent should have been expressed during the committee process but AEP did not find such expressions. AEP noted that the word "remaining" was added to §39.262(i) by the House State Affairs Committee when it adopted a Committee Substitute for Senate Bill 7 (CSSB 7), which changed various provisions of SB 7. AEP did not identify any legislative discussion indicating the reason for the addition of the word "remaining" to the language contained in the Senate version of SB 7.

The commission agrees with AEP's analysis of the meaning and intent of the PURA provisions concerning the determination of stranded costs of nuclear generation assets. An interpretation of PURA Chapter 39 as allowing quantification of the stranded costs of nuclear generation assets through a sale or exchange of assets, in addition to a full or partial stock evaluation, is more consistent with the express language of the statute. An interpretation that nuclear assets could not be valued through a sale would require that the commission ignore: (1) specific statutory language allowing the sale of "some or all" assets; (2) language allowing the market value of some nuclear assets to be determined through a "bona fide third-party transaction"; and (3) language limiting the application of the alternative provisions of §39.262(i) to only the "remaining" assets. In interpreting PURA, the commission must give meaning to all of the words of the statute. Based upon a consideration of PURA as a whole, the commission finds that PURA Chapter 39 should be interpreted in a manner that allows the market value of nuclear generation assets to be established using any of the four methods of quantification specified in PURA §39.262(h).

The commission also agrees with AEP that this interpretation is consistent with the policy underlying PURA Chapter 39. At the time it enacted SB 7 the Legislature started a multi-year process to create a competitive electric power market in Texas. No doubt the Legislature was aware that market conditions existing in 1999 could undergo significant changes before all steps of market creation were completed. For this reason, the Legislature gave considerable discretion to the commission and to the utilities concerning how the various parts of electric restructuring would be accomplished. Allowing a utility the flexibility to use any of the four market valuation methods will enable it to adapt to any changes in the market that have occurred since the enactment of SB 7 and thereby obtain a result that provides the highest value for its nuclear assets while also reducing the potential stranded cost burden on its ratepayers. This result is consistent with the legislative policy calling for the protection of "the public interest during the transition to and the establishment of a fully competitive electric power market."

The commission also agrees with AEP that the interpretation of PURA contained in the rule is not contradicted by the legislative history of SB 7. Although the Legislature may have been concerned about the possibility of a "fire sale" of nuclear assets, based upon market conditions existing at that time, it did not include specific language prohibiting a sale of nuclear assets. The commission notes that during the 76th Legislature, a bill addressing electric restructuring was also introduced in the House. House Bill 349 (HB 349) was introduced by Representative Steve Wolens, Chairman of the House State Affairs Committee. While HB 349 addressed similar subjects as SB 7, it was not a companion bill and, in many places, treated subjects in a different manner than in SB 7. On the subject of stranded cost, HB 349 gave the utility the option of deciding whether to use a market valuation method or an administrative method. There was no language that separately addressed the valuation of nuclear assets, so either option was available to the utility under HB 349. This language was consistent with Representative Wolen's stated preferences (cited in AEP's comments) favoring a market value approach.

After SB 7 was passed by the Senate on March 17, 1999, it was referred to the House State Affairs Committee for consideration. On April 12, 1999, the House State Affairs Committee considered both SB 7 and HB 349. Subsequent to that hearing, on May 5, 1999, the House State Affairs Committee reported a Committee Substitute (CSSB 7), which added the word "remaining" to what became §39.262(i). This addition was consistent with Chairman Wolen's stated preference for a market value approach and was consistent with the language contained in HB 349. Without the inclusion of the word "remaining," the language of §39.262(i) could be interpreted to require the use of ECOM to quantify the stranded costs of nuclear generating assets. The commission finds that this amendment to §39.262(i) was intended to provide greater flexibility to utilities and to clarify that a utility could use a sale of assets to value its nuclear assets. The language that was used in CSSB 7 was contained in the final version of the statute and is now found in §39.262(i). Based upon a consideration of the legislative history of SB 7, CSSB 7, and HB 349, the commission concludes that the interpretation of PURA contained in the new rule is consistent with the intent of the Legislature, as well as being supported by the express language of the statute and the policy reasons underlying SB 7.

AEP stated that the rule as proposed does not precisely reflect the intent of the statutory language. AEP requested that the first sentence of the rule be revised to use the word "may" rather than

the word "shall" in specifying the options available for quantifying the market value of nuclear generation assets. AEP also argued that the second sentence of the rule did not precisely reflect the statute and requested that the second sentence of the rule be replaced by language that copies the actual language of the statute.

The commission agrees with AEP's comments concerning the use of the word "may" instead of "shall" and amends the rule accordingly. However, the commission disagrees, in part, with AEP's comments concerning the second sentence of the proposed rule. The commission finds that merely repeating the same language as used in the statute fails to provide the necessary interpretation of law and policy that this rule was intended to provide. Accordingly, the commission will not revise the second sentence in the manner requested by AEP. AEP's comments raise concerns that the language used in the proposed rule does not precisely reflect the statutory intent and language. In response to AEP's comments, the commission agrees that there may be some uncertainty in the language used in the proposed rule and amends the language of the second sentence to more clearly reflect the statutory intent. These changes adequately address the comments of AEP concerning the specific language used in the rule.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This section is adopted under Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.001, which establishes the public policy to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry; PURA §39.252, which allows an electric utility to recover all of its net, verifiable, nonmitigable stranded costs in purchasing power and providing electric generation service; PURA §39.262(a), which provides that an electric utility and its affiliates may not be permitted to overrecover its stranded costs; PURA §39.262(c), which directs each transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company to jointly file an application to finalize its stranded costs under procedures to be determined by the commission; and PURA §39.262(h) and (i), which establish the methods by which the final stranded costs shall be calculated.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.001, 39.252, and 39.262.

§25.264. *Quantification of Stranded Costs of Nuclear Generation Assets.*

The market value of an affiliated power generation company's nuclear assets may be established by compliance with any of the four methods of quantification specified in Public Utility Regulatory Act (PURA) §39.262(h) and related requirements specified in §25.263 of this title (relating to True-up Proceeding). If the electric utility or its affiliated power generation company values some of its assets using the sale of assets or an exchange of assets, any remaining assets shall be combined in one or more transferee corporations as described in PURA §39.262(h)(2) and (3) for purposes of determining their market value, or the electric utility or its affiliated power generation company shall quantify its stranded costs for remaining nuclear assets using the "excess costs over market" or ECOM method.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER'S

RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1033, §61.1036

The Texas Education Agency (TEA) adopts an amendment to §61.1033 and new §61.1036, concerning school facilities standards, with changes to the proposed text as published in the December 6, 2002, issue of the *Texas Register* (27 TexReg 11357). Section 61.1033 establishes standards for adequacy of Texas public school facilities. The adopted amendment to §61.1033 and new §61.1036 modify and clarify rule pertaining to new school construction. These rule actions phase out old construction standards and update them to reflect recent changes in model building codes, increase safety in newly constructed or substantially renovated science laboratories, close loopholes pertaining to construction issues, and provide direction to school districts and designers by clarifying ambiguous language that is currently open to interpretation.

The adopted amendment to 19 TAC §61.1033 consists of revising the title from "School Facilities Standards" to "School Facilities Standards for Construction before January 1, 2004." Language is also added to subsection (b) to clarify the applicability of this rule to projects approved by a school district board of trustees after September 1, 1998, and before January 1, 2004. In addition, language is added to subsection (d)(2)(B)(ii) relating to specialized classrooms to provide definition for a science lecture/lab.

The adopted new 19 TAC §61.1036 applies to projects for new construction or major space renovations for which the construction documents are approved by a school district board of trustees on or after January 1, 2004. The new rule establishes definitions and procedures; effective date; certification of design and construction; space, minimum square foot, and design requirements; educational adequacy; and construction quality.

The adopted amendment and new rule are adopted to be effective in the summer of 2003; however, as specified, the new provisions will apply to projects on or after January 1, 2004. The summer effective date allows districts to make plans in advance of the winter implementation date.

In response to public comments, the following changes were made to 19 TAC §61.1033 since published s proposed.

The title is revised to "School Facilities Standards for Construction before January 1, 2004."

Subsection (b) is revised to apply to projects before January 1, 2004, and a technical edit is made to reference this subsection as "implementation date" rather than "effective date."

In response to public comments, the following changes were made to 19 TAC §61.1036 since published as proposed.

The title is revised to "School Facilities Standards for Construction on or after January 1, 2004."

Subsection (a)(3)(B), middle school level definition, is revised to add a school facility that includes only Grade 6.

Subsection (a)(3)(C), high school level definition, is revised to add a school facility that includes only Grade 9.

Subsection (b) is revised to reflect January 1, 2004, in all references. In addition, a technical edit is made to reference this subsection as "implementation date" rather than "effective date." This subsection is also revised to add a provision that would allow school districts, for projects funded from bond elections passed prior to October 1, 2003, and for which a contract for construction has been awarded no later than December 31, 2005, to comply with the science lecture/lab standards specified in §61.1033(d)(2)(B)(ii) of this title in lieu of the standards specified in §61.1036(d)(5)(C)(iii), and with the library standards specified in §61.1033(d)(2)(C)(ii) of this title in lieu of the standards specified in §61.1036(d)(5)(D)(ii).

Subsection (d)(2) is revised to add a provision that would allow school districts to ask the State Funding Division of the Texas Education Agency to consider approval on a case-by-case basis for alternate classroom designs with square footage measurements less than those specified in the subsection.

Subsection (d)(5)(B)(ii), pertaining to elementary classrooms, is revised to clarify that the size requirement applies to Grades 2 and up.

Subsection (d)(5)(C)(iii) is revised to clarify that a clearly defined laboratory area and a clearly defined lecture area is typical for combination science laboratory/classrooms.

Subsection (d)(5)(C)(vi)(II) and (III) is revised to clarify that the tepid water required by ANSI Z358.1 for eye/face washes and safety showers is not required to come from a heated source, and to encourage, but not require, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season to consider a tepid water system with a heated source.

Subsection (d)(5)(C)(vi)(IV) is revised to require that ventilation systems serving science rooms be designed and constructed so that under normal operation the return air from the science rooms is not recirculated into non-science areas.

Subsection (d)(5)(C)(vi)(V) is revised to clarify that exhaust fans are to be provided in all rooms using or storing hazardous or vaporous chemicals.

Subsection (d)(5)(D)(ii), pertaining to library size, is revised to reduce the additional space requirement from 35 to 25 square feet for housing each additional student computer above 12 and to clarify that windows shall be placed so that adequate wall and floor space remains to accommodate the necessary shelving.

Subsection (e) is revised to include educational specifications as part of the criteria for educational adequacy.

Subsection (f)(3)(B), pertaining to indoor air quality, is revised to add a reference to the U. S. Environmental Protection Agency's "Indoor Air Quality Tools for Schools" program.

The following comments were received regarding adoption of the amendment and new section.

Comment. A school librarian commented that the definition of "library" in §61.1033(a)(4) is too vague. This librarian also suggested that library size should be based on the population in the library and the activities that occur within it.

Agency Response. The agency disagrees with these comments. The provisions found in §61.1033 reflect standards in effect from September 1, 1998, through December 31, 2003. The new definition of "library" has been expanded in the provisions found in §61.1036 for construction on or after January 1, 2004. Under the provisions found in §61.1036(d)(5)(D)(ii), library design is required to be based on the population of the campus served by the library.

Comment. A school librarian recommended using the term reading "area" rather than reading "room" in §61.1033(a)(4)(A).

Agency Response. The agency disagrees with the recommendation. The provisions found in §61.1033 reflect standards in effect from September 1, 1998, through December 31, 2003. The term reading "area" is used in the provisions found in §61.1036 for construction on or after January 1, 2004.

Comment. A regional building code director and an architect each recommended that §61.1033(f)(2) be modified to include a reference to the International Building Code. The regional building code director also commended the agency for including the code provisions contained in §61.1036.

Agency Response. The agency disagrees with the recommendation. The provisions found in §61.1033 reflect standards in effect from September 1, 1998 through December 31, 2003. To change building code requirements retroactively for projects that have already been completed or are under construction would place an unrealistic and potentially costly burden on affected school districts. The provisions found in §61.1036 for construction on or after January 1, 2004, contain references to the International Building Code.

Comment. An architect recommended that the definition for "educational specifications" in §61.1036(a)(2) be renamed "educational program," and that the information given under the definition for "educational program" in §61.1036(a)(1) be covered in a separate section. The commenter also recommended that the information in the educational program be provided to the architect during the programming process.

Agency Response. The agency disagrees with the recommendations. Section 61.1036(c)(3)(A) requires the school district to provide the architect or engineer with the district's educational program and educational specifications. The definitions in §61.1036(a)(1) and (2) primarily provide direction to the school district as to what information should be included in the educational program and educational specifications. The standards do not specifically require the school district to provide this information in its entirety to the architect or engineer prior to design, and thus a district is already free to provide this information to the architect or engineer during the programming/design process.

Comment. An architect recommended deleting or making more clear the language found in §61.1036(a)(2)(J) and (K), which

suggest addressing safety and security in developing educational specifications. The commenter believed the wording to be too broad and unclear.

Agency Response. The agency disagrees with the recommendation. The information provided in §61.1036(a)(2)(A)-(K) are suggestions, rather than requirements, as to what a district should consider including in the educational specifications. Phrasing these suggestions in broad terms allows more flexibility at the local level for a district in developing the educational specifications.

Comment. An architect recommended adding a definition for "Intermediate Schools-typically 3-5 or 4-5" to §61.1036(a)(3).

Agency Response. The agency disagrees with this comment. The term "intermediate school" is not used anywhere within these standards so a definition of the term is not needed.

Comment. Several architects and school district officials inquired about where 6th grade and 9th grade campuses would fall under the definitions found in §61.1036(a)(3).

Agency Response. The agency agrees that the definition needs additional clarification. The rule has been modified to include a 6th grade campus as a middle school in §61.1036(a)(3)(B) and a 9th grade campus as a high school in §61.1036(a)(3)(C).

Comment. A school librarian does not understand the term "head-end" room found in §61.1036(a)(6)(F).

Agency Response. The term "head-end" is a generic term used by architects/engineers and technology personnel to describe the room that houses the "main distribution frame" of a technology network. No modification of the rule is necessary.

Comment. An architect recommended changing the language in the definition of "major space renovations" in §61.1036(a)(8) by removing the reference to "most existing interior walls. . ." and replacing it with language that sets 50% or more of demolition as the level at which compliance with the standards is required. The architect is concerned there will be argument and disagreement over the term "most."

Agency Response. The agency disagrees with this comment. Renovations projects are not as predictable or definable as projects involving new construction or additions. As such, any terminology used in this definition will be subject to interpretation and disagreement. The agency believes the term "most" will suffice when interpreting this definition.

Comment. An architect raised a concern that the minimum room size requirements could limit innovative space-saving designs, and suggested some language be added to allow flexibility for designers and districts in this area.

Agency Response. The agency agrees with this comment. The rule has been modified by adding language in §61.1036(d)(2) to allow the State Funding Division of TEA to consider on a case-by-case basis alternate classroom designs that have square feet per room measurements less than those specified in §61.1036(d).

Comment. An architect asked whether §61.1036(d)(3) was a requirement or recommendation, and noted that the wording could be interpreted either way and that it needed clarification.

Agency Response. The agency disagrees with this comment. The word "should" is used to identify the contents of §61.1036(d)(3), so the contents of §61.1036(d)(3) are considered to be recommendations. It is common in the state rulemaking process to use the word "shall" to identify

requirements and "should" to identify recommendations. No modification of the rule is necessary.

Comment. An architect recommended changing the list of design criteria required to be provided by the school district in §61.1036(d)(5)(A). The commenter was also troubled by the list of chemicals, believing this to be outside the purview of an architect's expertise.

Agency Response. The agency disagrees with the recommendation. The design criteria required to be provided by the school district in §61.1036(d)(5)(A) is specific information needed by the architect or engineer to ensure a design that complies with the provisions found in §61.1036(d)(5)(B)-(D). The standards do not require the architect or engineer to be an expert on chemicals. The architect or engineer will need only to determine if any chemicals meet the definition of hazardous as defined by the Texas Department of Health (TDH), and then design according to these standards. The agency has found that determining and obtaining the list of chemicals considered hazardous by TDH definition is not a difficult endeavor.

Comment. An architect expressed confusion over the requirements for prekindergarten-Grade 1 classroom sizes and other elementary classroom sizes in §61.1036(d)(5)(B)(i) and (ii).

Agency Response. The agency agrees that these requirements are confusing. Clause (ii) pertaining to elementary classrooms in §61.1036(d)(5)(B) has been modified by adding language to specify that the requirement applies to classrooms for Grades 2 and up.

Comment. A school librarian suggested that the 25 square feet per computer station requirement in computer labs not used for regular instruction found in §61.1036(d)(5)(C)(ii) is excessive and that 20 square feet would be adequate.

Agency Response. The agency disagrees with the recommendation. The 25 square feet per computer station is used to determine the size of the room. Only some of the 25 square feet is dedicated to actual space taken up by the computer and a sitting user; the rest of the space is necessary for the room's circulation and accessibility. While reviewing this comment, the agency discovered that the requirement in §61.1036(d)(5)(D)(ii) to add 35 square feet to the library size for each computer over 12 in the library is not consistent with the requirement stated in §61.1036(d)(5)(C)(ii) for computer labs. Accordingly, §61.1036(d)(5)(D)(ii) has been modified so that the requirement is to add 25 square feet to the library size for each computer over 12 in the library.

Comment. Numerous architects and school district officials raised concerns about the increased costs to construction projects due to the increased size requirements for science rooms and libraries found in §61.1036(d)(5)(C)(iii) and §61.1036(d)(5)(D)(ii), especially for instances where a district had passed bond elections with predetermined construction costs that did not anticipate these changes.

Agency Response. The agency agrees that the proposed changes could have a detrimental cost impact on districts in this situation. To provide additional time for districts to accommodate the changes, the implementation date in §61.1036(b) has been changed to reference construction on or after January 1, 2004. A technical edit has also been made to reference this subsection as "implementation date" rather than "effective date." The implementation date in §61.1033(b) has been changed to reference new construction or major space renovations approved by a

school district board of trustees after September 1, 1998, and before January 1, 2004. A technical edit has been made to this subsection also to clarify reference to implementation date rather than effective date. The titles of both §61.1033 and §61.1036 have been changed to reflect January 1, 2004, rather than August 1, 2003. The rule has also been modified by adding language in §61.1036(b) that would allow school districts, for projects funded from bond elections passed prior to October 1, 2003, and for which a construction contract has been awarded no later than December 31, 2005, to comply with the science lecture/lab standards specified in §61.1033(d)(2)(B)(ii) in lieu of the standards specified in §61.1036(d)(5)(C)(iii), and with the library standards specified in §61.1033(d)(2)(C)(ii) in lieu of the standards specified in §61.1036(d)(5)(D)(ii).

Comment. An architect asked if the language in §61.1036(d)(5)(C)(iii) meant that only in situations where there was a clearly defined laboratory area and a clearly defined lecture area were the provisions related to combination science laboratory/classrooms required to be followed.

Agency Response. The language pertaining to a clearly defined laboratory area and a clearly defined lecture area was meant to be descriptive and not limiting in nature. The rule has been modified to indicate that it is typical to have a clearly defined laboratory area and a clearly defined lecture area.

Comment. A school district official raised a concern about the increased room size requirements for combination science laboratory/classrooms found in §61.1036(d)(5)(C)(iii). The official felt that the current room sizes were sufficient and did not need to be increased.

Agency Response. The agency disagrees with this comment. The increased science room sizes are necessary to ensure an adequate and safe science learning environment.

Comment. An architect asked if a built-in fume hood is required only in chemistry and advanced placement chemistry labs under §61.1036(d)(5)(C)(vi)(I).

Agency Response. In §61.1036(d)(5)(C)(vi)(I), a built-in fume hood is required to be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in fume hood is not required in any other laboratory or classroom. Section 61.1036(d)(5)(C)(vi)(I) also recommends, but does not require, that a built-in fume hood be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. No modification of the rule is necessary.

Comment. An architect asked if a chemical storage room would require an eye/face wash under §61.1036(d)(5)(C)(vi)(II).

Agency Response. In §61.1036(d)(5)(C)(vi)(II), a built-in eye/face wash is required in certain rooms where hazardous chemicals are used by instructors and/or students. A room used exclusively for storing hazardous chemicals would not be required to have an eye/face wash under this section. Only rooms where hazardous chemicals are "used" are required to have a built-in eye/face wash. Examples of the "use" of hazardous chemicals could include, but are not limited to, opening a hazardous chemical container, pouring a hazardous chemical into a test tube or beaker, or mixing hazardous chemicals as part of a lab experiment. No modification of the rule is necessary.

Comment. An engineer recommended deleting the requirement for a heated source for the tepid water in the eye/face wash and safety shower provisions of §61.1036(d)(5)(C)(vi)(II) and (III).

The engineer believes that the temperate Texas climate makes it unnecessary to heat the water since the unheated water taken directly from the water system or source should naturally fall in a tepid range. The engineer believes this would add unneeded expenses to the cost of a school.

Agency Response. The agency agrees with this comment. Additional research by the agency found that there is no established, widely accepted national definition for tepid water. The Occupational Safety and Health Administration (OSHA) recommends following ANSI Z358.1, but has not defined the term "tepid." OSHA has oversight in parts of the country with climates much more extreme than found in Texas. Section 61.1036(d)(5)(C)(vi)(II) and (III) has been modified to state that the tepid water required by ANSI Z358.1 is not required to come from a heated source, and language has been added to encourage, but not require, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season to consider a tepid water system with a heated source.

Comment. An architect commented that §61.1036(d)(5)(C)(vi) needed to be clarified so that fume hoods, eye/face washes, safety showers, ventilation system, exhaust fans, workspace, and shut-off controls would not be required in all the rooms and spaces listed. Another architect also commented that the exhaust fan requirement should be clarified as to what rooms actually require the fans.

Agency Response. The agency disagrees with the essence of the first recommendation and agrees with the second recommendation. The language found in the provisions in §61.1036(d)(5)(C)(vi)(I)-(VII) that follow the opening statement of §61.1036(d)(5)(C)(vi) clearly indicate in what rooms and spaces the fume hoods, eye/face washes, safety showers, ventilation system, workspace, and shut-off controls are required. These items in §61.1036(d)(5)(C)(vi)(I)-(VII) are not required in every room and space listed in the opening statement of §61.1036(d)(5)(C)(vi). However, §61.1036(d)(5)(C)(vi)(V), pertaining to exhaust fans, has been modified by adding language to specify that an exhaust fan shall be provided in all rooms where hazardous or vaporous chemicals are to be used or stored.

Comment. Several architects and school district officials raised concerns about the independent science ventilation requirement in §61.1036(d)(5)(C)(vi)(IV), especially for facilities where there are only a few science rooms. They believed it could be costly to separately zone small science areas.

Agency Response. The agency agrees with this comment. The initial intent of the requirement was to ensure that fumes from the science area were not recirculated into non-science areas. The rule has been modified to delete the requirement for an independent system and to require that the return air from the science rooms shall not be recirculated into non-science areas.

Comment. An individual raised a question about the need for emergency shut-off for water in §61.1036(d)(5)(C)(vi)(VII).

Agency Response. The agency disagrees with this comment. It is not difficult or costly to include a shut-off for this utility, and it could be helpful to quickly be able to shut-off water in case of an accident, a prank, vandalism, or some similar situation.

Comment. An architect raised a concern that the language found in the last sentence §61.1036(d)(5)(D)(ii) could be interpreted to mean that library shelving can only be placed along walls.

Agency Response. The agency agrees with this comment. The rule has been modified to state that adequate wall and floor space remains to accommodate the shelving.

Comment. A school librarian pointed out that the library sizing requirement in §61.1036(d)(5)(D)(ii) is not consistent with the high school library size minimum requirement of 2,800 square feet in §61.1033(d)(2)(C)(ii).

Agency Response. The agency disagrees with this comment. The provisions found in §61.1033 reflect standards in effect from September 1, 1998, through December 31, 2003. The provisions found in §61.1036 reflect standards in effect for construction on or after January 1, 2004. Many provisions in §61.1036 are different from those found in §61.1033.

Comment. An architect suggested that in §61.1036(d)(5)(D)(ii) the actual standards adopted for libraries be referenced as opposed to the statute.

Agency Response. The agency disagrees with the recommendation. To reference the actual library standards adopted under the statute would require a reference to rules adopted in the Texas Administrative Code. Since rules can be changed easier than statute, a reference to the statute is preferred because these school facility standards would not have to be modified every time the library standards (rules) are modified. The library standards are found in 13 TAC Chapter 4, School Library Programs, Subchapter A, Standards and Guidelines.

Comment. An architect suggested deleting the sentence in §61.1036(d)(6)(B) that requires a minimum of 150 square feet for each small group, conference, or office area or room for a school constructed under a nontraditional design model. The architect believes these spaces can work at less than 150 square feet.

Agency Response. The agency disagrees with the recommendation. While a room or space of less than 150 square feet might suffice for small group of two or three students per instructor, groups of five or six students per instructor would be cramped in the smaller space. Provisions for persons with disabilities would also be more difficult in a smaller space.

Comment. A school librarian expressed concern that §61.1036(d)(6)(D) would be used by districts to take space from the library and use it in other areas of the facility not conducive to reading or use of reference materials.

Agency Response. The agency disagrees with this comment. The provisions found in §61.1036(d)(6) can be used only in schools designed under nontraditional models. Schools built using traditional design models will not be allowed to use the provisions found in §61.1036(d)(6) to try to circumvent provisions found elsewhere in the standards. The agency believes that most school districts will continue to choose to design schools using traditional models and would not be eligible to disperse reading spaces and reference materials outside of the defined library space.

Comment. An architect commented that §61.1036(e) should include a reference to educational specifications.

Agency Response. The agency agrees with this comment. The rule has been modified to include a reference to educational specifications.

Comment. An architect stated that §61.1036(f)(3)(A), which requires an adequate technology, electrical, and communications

infrastructure, is not helpful as written and should be strengthened, revised, or deleted. Another architect recommended that this section include cabling standards.

Agency Response. The agency disagrees with these recommendations. The agency believes it is important that the users of the facility be given input in the design of the technology, electrical, and communications infrastructure, so that the infrastructure is usable (adequate) for the users. Because technology changes so quickly, and because the agency has other divisions that address technology issues in schools, developing a high level of detail in these standards for the technology, electrical, and communications infrastructure could limit the ability of the school districts to consider multiple options during the local decision-making process, and would not be consistent with the approach taken in other parts of the standards.

Comment. A regional education service center facility consultant recommended including a reference to the U. S. Environmental Protection Agency's "Indoor Air Quality Tools for Schools" program in §61.1036(f)(3)(B).

Agency Response. The agency agrees with the recommendation. Section 61.1036(f)(3)(B) has been modified to include a reference to this program.

Comment. A school librarian expressed dismay with the current condition of the librarian's existing library. The librarian supported the standards so that there would be some legal recourse to address the existing library conditions.

Agency Response. The agency disagrees with this comment. Existing facilities would be "grandfathered" under the provisions found in §61.1036 until such time as major renovations occur.

Comment. A school librarian raised questions about the need to convince people that these changes to the standards are necessary, and the need to convince administrators about updating old libraries to more closely meet the requirements for new libraries.

Agency Response. The agency disagrees with this comment. The issues and questions raised by this commenter are concerns that are more properly addressed at the local district level and should not be addressed by these standards.

Comment. Comments were received from two school librarians and a senior manager with a building code organization in support of the proposed rules.

Agency Response. No response necessary.

Comment. Numerous architects, engineers, school district officials, and other individuals expressed general support for the direction being taken with the proposed rules in §61.1036.

Agency Response. No response needed.

The amendment and new section are adopted under Texas Education Code, §46.008, which authorizes the commissioner to establish standards for adequacy of school facilities.

§61.1033. *School Facilities Standards for Construction before January 1, 2004.*

(a) Definitions and procedures. The following words, terms, and procedures, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Educational program--A written document that includes the following information:

(A) a summary of the school district's educational philosophy, mission, and goals; and

(B) a description of the general nature of the district's instructional program in accordance with §74.1 of this title (relating to Essential and Knowledge and Skills).

(2) Educational specifications--Educational specifications for a proposed new school facility or major space renovation include a description of the proposed project, expressing the range of issues and alternatives. The following information should be included in the educational specifications:

(A) the instructional programs, grade configuration, and type of facility;

(B) number of students;

(C) a list of any specialized classrooms or major support areas, noninstructional support areas, or external activity spaces;

(D) estimated size of facility;

(E) estimated budget for the facility project;

(F) school administrative organization; and

(G) hours of operation that include the instructional day, extracurricular activities, and any public access or use.

(3) Instructional space--General classrooms, specialized classrooms, and major support areas.

(4) Library--Library will include the following minimum requirements:

(A) reading room;

(B) stack area; and

(C) necessary service areas.

(5) Major space renovations--At least 50% of the gross area of the facility's instructional space is within the limits of the work. Other renovations associated with repair or replacement of architectural interior or exterior finishes; fixtures; equipment; and electrical, plumbing, and mechanical systems are not subject to the requirements of subsections (d) and (e) of this section, but shall comply with applicable building codes as required by subsection (f) of this section.

(6) Square feet per pupil--The net interior space of a room divided by the maximum number of pupils to be housed in that room during a single class period.

(7) Square feet per room measurements--The net square footage of a room that will house 22 students at the elementary level and 25 students at the middle or high school level. The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space or storage space, such as closets or preparation offices.

(b) Implementation date. The requirements for school facility standards shall apply to projects for new construction or major space renovations approved by a school district board of trustees after September 1, 1998, and before January 1, 2004.

(c) Certification of design and construction.

(1) In this section, the word "certify" indicates that the architect or engineer has reviewed the standards contained in this chapter and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform to the provisions of this section, except as indicated on the certification.

(2) The school district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance.

(3) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.

(A) The school district shall provide the architect or engineer the long-range school facility plan and/or educational specifications approved by the board of trustees as required by this subchapter, and building code specifications for the facility.

(B) The architect or engineer shall perform a building code search under applicable regulations that may influence the project, and shall certify that the design has been researched before it is final.

(C) The architect or engineer shall also certify that the facility has been designed according to the provisions of this section, based on the long-range school facility plan and/or educational specifications, building code specifications, and all documented changes to the construction documents provided by the district.

(D) The building contractor or construction manager shall certify that the facility has been constructed in general accordance with the construction documents specified in subparagraph (C) of this paragraph.

(E) When construction is completed, the school district shall certify that the facility conforms to the design requirements specified in subparagraph (A) of this paragraph.

(d) Space, minimum square foot requirements.

(1) A school district shall provide instructional space if required by the district educational specifications described in subsection (e) of this section.

(2) For each type of instructional space, a district may satisfy the requirements of this section by using, as appropriate, either the standard for the minimum square feet per pupil or for square feet per room specified in paragraphs (1)-(3) of this subsection. Room size requirements are based on rooms that will house 22 students at the elementary level and 25 students at the middle or high school level.

(A) General classrooms.

(i) Classrooms for prekindergarten-Grade 1 shall have a minimum of 36 square feet per pupil or 800 square feet per room.

(ii) Classrooms at the elementary school level shall have a minimum of 30 square feet per pupil or 700 square feet per room.

(iii) Classrooms at the secondary school level shall have a minimum of 28 square feet per pupil or 700 square feet per room.

(B) Specialized classrooms.

(i) Computer laboratories shall have a minimum of 41 square feet per pupil or 900 square feet per room at the elementary school level; and 36 square feet per pupil or 900 square feet per room at the secondary school level.

(ii) Science lecture/lab shall have a minimum of 41 square feet per pupil or 900 square feet per room at the elementary school level; 50 square feet per pupil or 1,000 square feet per room at the middle school level; and 50 square feet per pupil or 1,200 square feet per room at the high school level. A science lecture/lab is a classroom where both lecture and lab work occur in the same room and during the same class period.

(C) Major support areas.

(i) Primary gymnasiums or physical education space, if required by the district's educational program, shall have a minimum of 3,000 square feet at the elementary school level; 4,800 square feet at the middle school level; and 7,500 square feet at the high school level.

(ii) Libraries shall have a minimum of 3.0 square feet times the planned student capacity of the school. The minimum size of any elementary school library shall be 1,400 square feet. The minimum size of any middle school library shall be 2,100 square feet. The minimum size of any high school library shall be 2,800 square feet.

(3) Other space requirements should be developed from school district design criteria as required to meet educational program needs.

(e) Educational adequacy. A proposed new school facility or major space renovation of an existing school facility meets the conditions of educational adequacy if the design of the proposed project is based on the requirements of the school district's educational program and the student population that it serves.

(f) Construction quality.

(1) Districts with existing building codes. A school district located in an area that has adopted local building codes shall comply with those codes (including fire and mechanical, electrical, and plumbing codes). The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority.

(2) Districts without existing building codes. A school district located in an area that has not adopted local building codes shall adopt and use the latest edition of either the Uniform Building Code or Standard (Southern) Building Code (and related fire, mechanical, and plumbing codes); and the National Electric Code. A qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, and mechanical and electrical design. The review shall be conducted before bidding and must be conducted by a certified building code consultant. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. Any disputes shall be a matter for contract resolution.

(3) Other provisions. School districts shall comply with the provisions of the Americans with Disabilities Act of 1990 (Title I and Title II) and other local, state, and federal requirements as applicable.

§61.1036. School Facilities Standards for Construction on or after January 1, 2004.

(a) Definitions and procedures. The following words, terms, and procedures, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Educational program--A written document, developed and provided by the district, that includes the following information:

(A) a summary of the school district's educational philosophy, mission, and goals; and

(B) a description of the general nature of the district's instructional program in accordance with §74.1 of this title (relating to Essential Knowledge and Skills). The written educational program should describe:

- (i) the learning activities to be housed, by instructional space;
- (ii) how the subject matter will be taught (methods of instructional delivery);
- (iii) the materials and equipment to be used and stored;
- (iv) utilities and infrastructure needs; and
- (v) the characteristics of furniture needed to support instruction.

(2) Educational specifications--A written document for a proposed new school facility or major space renovation that includes a description of the proposed project, expressing the range of issues and alternatives. School districts that do not have personnel on staff with experience in developing educational specifications shall utilize the services of a design professional or consultant experienced in school planning and design to assist in the development of the educational specifications. The school district shall allow for input from teachers, other school campus staff, and district program staff in developing the educational specifications. The following information should be included in the educational specifications:

- (A) the instructional programs, grade configuration, and type of facility;
- (B) the spatial relationships--the desired relationships for the functions housed at the facility:
 - (i) should be developed by the school district to support the district's instructional program;
 - (ii) should identify functions that should be:
 - (I) adjacent to, immediately accessible;
 - (II) nearby, easily accessible; and
 - (III) removed from or away from; and
 - (iii) should relate to classroom/instructional functions, instructional support functions, building circulation, site activities/functions, and site circulation.
- (C) number of students;
- (D) a list of any specialized classrooms or major support areas, noninstructional support areas, outdoor learning areas, outdoor science discovery centers, living science centers, or external activity spaces;
- (E) a schedule of the estimated number and approximate size of all instructional and instructional support spaces included in the facility;
- (F) estimated budget for the facility project;
- (G) school administrative organization;
- (H) provisions for outdoor instruction;
- (I) hours of operation that include the instructional day, extracurricular activities, and any public access or use;
- (J) the safety of students and staff in instructional programs, such as science and vocational instruction; and
- (K) the overall security of the facility.

(3) Grade levels:

(A) elementary school level--a school facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;

(B) middle school level--a school facility that includes some or all grades from Grade 6 through Grade 8 or Grade 9, or a school facility that includes only Grade 6;

(C) high school level--a school facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or a school facility that includes only Grade 9; and

(D) secondary school level--a school facility that includes some or all grades from Grade 6 through Grade 12.

(4) Hazardous chemical--As defined by the Texas Health and Safety Code, Chapter 502, Hazard Communication Act.

(5) Instructional space--General classrooms, specialized classrooms, outdoor learning areas, and major support areas.

(6) Library--Library will include the following minimum requirements:

- (A) reading/instructional area;
- (B) reference/independent study area;
- (C) stack area;
- (D) circulation desk/area;
- (E) computer/on-line reference areas; and
- (F) necessary ancillary areas, such as offices, work-rooms, head-end room, and storage rooms.

(7) Long-range school facility plan--School districts are encouraged to formulate a long-range facilities plan prior to making major capital investments. When formulating a plan, a school district's process should allow for input from teachers, students, parents, taxpayers, and other interested parties that reside within the school district. Major considerations should include:

- (A) a description of the current and future instructional program and instructional delivery issues;
- (B) the age, condition, and educational appropriateness of all buildings on the campus (in district), considering condition of all components and systems as well as design flexibility, including an estimate of cost to replace or refurbish and appropriate recommendations;
- (C) verification of the suitability of school site(s) for the intended use, considering size, shape, useable land, suitability for the planned improvements, and adequate vehicular and pedestrian access, queuing, parking, playgrounds and fields, etc.; and
- (D) a time-line and a series of recommendations to modify or supplement existing facilities to support the district's instructional program.

(8) Major space renovations--Renovations to all or part of the facility's instructional space where the scope of the work in the affected part of the facility involves substantial renovations to the extent that most existing interior walls and fixtures are demolished and then subsequently rebuilt in a different configuration and/or function. Other renovations associated with repair or replacement of architectural interior or exterior finishes; fixtures; equipment; and electrical, plumbing, and mechanical systems are not subject to the requirements of subsections (d) and (e) of this section, but shall comply with applicable building codes as required by subsection (f) of this section.

(9) Square feet per student--The net square footage of a room divided by the maximum number of students to be housed in that room during any single class period.

(10) Square feet per room measurements--The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space, classroom door alcoves, or storage space, such as closets or preparation offices. The net square footage of a room shall be measured from the inside surfaces of the room's walls.

(11) Abbreviations:

- (A) ANSI--American National Standards Institute;
- (B) ICC--International Code Council; and
- (C) NFPA--National Fire Protection Association.

(b) Implementation date. The requirements for school facility standards shall apply to projects for new construction or major space renovations for which the construction documents have been approved by a school district board of trustees, or a board's authorized representative, on or after January 1, 2004. For projects for which a school district approved the construction documents prior to January 1, 2004, if a school district makes changes or revisions to the design of the projects on or after January 1, 2004, and before the end of construction, the changes or revisions are subject to the standards specified in §61.1033 of this title (relating to School Facilities Standards for Construction before January 1, 2004). For projects funded from bond elections passed prior to October 1, 2003, and for which a contract for construction has been awarded no later than December 31, 2005, a school district may comply with the standards specified in §61.1033(d)(2)(B)(ii) of this title in lieu of the standards specified in subsection (d)(5)(C)(iii) of this section, and with the standards specified in §61.1033(d)(2)(C)(ii) of this title in lieu of the standards specified in subsection (d)(5)(D)(ii) of this section.

(c) Certification of design and construction.

(1) In this section, the word "certify" indicates that the architect or engineer has reviewed the standards contained in this chapter and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform to the provisions of this section, except as indicated on the certification.

(2) The school district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance.

(3) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.

(A) The school district shall provide the architect or engineer the educational program and educational specifications approved by the board of trustees as required by this subchapter, and building code specifications for the facility. If a school district has a long-range school facility plan, it shall also be provided to the architect or engineer.

(B) The architect or engineer shall perform a building code search under applicable regulations that may influence the project, and shall certify that the design has been researched before it is final.

(C) The architect or engineer shall also certify that the facility has been designed according to the provisions of this section,

based on the educational program, educational specifications, long-range school facility plan, building code specifications, and all documented changes to the construction documents provided by the district.

(D) The building contractor or construction manager shall certify that the facility has been constructed in general accordance with the construction documents specified in subparagraph (C) of this paragraph. If the school district acts as general contractor, it shall make the certification required by this paragraph.

(E) When construction is completed, the school district shall certify that the facility conforms to the design requirements specified in subparagraph (A) of this paragraph.

(F) The certifications specified in subparagraphs (A)-(E) of this paragraph shall be gathered on the "Certification of Project Compliance" form developed by the Texas Education Agency (TEA). The school district will retain this form in their files indefinitely until review and/or submittal is required by representatives of the TEA.

(d) Space, minimum square foot, and design requirements.

(1) A school district shall provide instructional space if required by the district educational specifications described in subsection (e) of this section.

(2) For each type of instructional space, a district shall satisfy the requirements of this section by using the standard for square feet per room specified in paragraph (5)(B)-(D) of this subsection. For school districts with facilities that have one or more classrooms with maximum class sizes that are normally less than 22 students at the elementary level and less than 25 students at the middle or high school level, the school districts may satisfy the requirements of this section for those classrooms by using the standard for the minimum square feet per student specified in paragraph (5)(B)-(D) of this subsection. These classrooms shall be designed on the basis of expected maximum class size, and not expected average class size. Upon submission by a district, alternate classroom designs with square feet per room measurements less than those specified in this subsection may be considered for approval by the TEA division responsible for state funding on a case-by-case basis.

(3) School districts should consider providing extra square footage in classrooms where the use on a regular basis of multiple computers, large furniture, televisions, mobile laptop carts, mobile video conferencing carts, monitors on carts, or the like is anticipated. To improve circulation and usability of classroom space, school districts with class sizes that are normally larger than 25 students for Grades 5-12 should also consider increasing the minimum classroom size by adding the appropriate minimum square feet per student specified in paragraph (5)(B)-(D) of this subsection for each student in excess of 25.

(4) Compliance with the standards specified in paragraph (5)(B)-(D) of this subsection will be evaluated based on the school district's intended full-time and/or part-time use of the areas, and not the name of the areas as identified in the construction documents.

(5) Instructional area size and design requirements.

(A) Design criteria. The school district shall provide the architect or engineer with all expected class sizes for the facilities, with the list of chemicals to be used in the science laboratories or science laboratory/classrooms, and with the number of computers anticipated in the library, so that the architect or engineer can adequately design the facilities to meet the criteria specified in subparagraphs (B)-(D) of this paragraph.

(B) General classrooms.

(i) Classrooms for prekindergarten-Grade 1 shall have a minimum of 800 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 36 square feet per student.

(ii) Classrooms at the elementary school level for Grades 2 and up shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 32 square feet per student.

(iii) Classrooms at the secondary school level shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 28 square feet per student.

(C) Specialized classrooms.

(i) A computer classroom used for the teaching of computer skills shall have a minimum of 900 square feet per room. The minimum room size is ideal for 25 students; 36 square feet per student should be added to the minimum square footage for each student in excess of 25. School districts with small class sizes may have computer classrooms that provide a minimum of 36 square feet per student. School districts should consider the heat output of computers when designing the ventilation system that serves a computer classroom.

(ii) Computer laboratories that are not used regularly for scheduled instruction but that are intended to support other instructional areas shall have a minimum of 25 square feet per computer station. For computer laboratories where the use of portable computers, such as laptop computers, is anticipated, the size may be reduced to 20 square feet per computer station.

(iii) The following provisions shall apply to combination science laboratory/classrooms, where each student has a lab station and where typically there is a clearly defined laboratory area and a clearly defined lecture area.

(I) Combination science laboratory/classrooms shall have a minimum of 900 square feet per room at the elementary school level. The minimum room size is adequate for 22 students; 41 square feet per student shall be added to the minimum square footage for each student in excess of 22.

(II) Combination science laboratory/classrooms shall have a minimum of 1,200 square feet per room at the middle school level. The minimum room size is adequate for 24 students; 50 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(III) Combination science laboratory/classrooms shall have a minimum of 1,400 square feet per room at the high school level. The minimum room size is adequate for 24 students; 58 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(IV) School districts with small class sizes may have combination science laboratory/classrooms that provide a minimum of 41 square feet per student but not less than 700 square feet total at the elementary school level, a minimum of 50 square feet per student but not less than 950 square feet total at the middle school level, and a minimum of 58 square feet per student but not less than 1,100 square feet total at the high school level.

(iv) For districts that choose to use separate science classrooms and science laboratories, the following provisions shall apply.

(I) A science classroom shall be a minimum of 700 square feet regardless of grade level served.

(II) A science laboratory shall have a minimum of 800 square feet at the elementary school level. The minimum laboratory size is adequate for 22 students; 36 square feet per student shall be added to the minimum square footage for each student in excess of 22.

(III) A science laboratory shall have a minimum of 900 square feet at the middle school level. The minimum laboratory size is adequate for 24 students; 38 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(IV) A science laboratory shall have a minimum of 1,000 square feet at the high school level. The minimum laboratory size is adequate for 24 students; 42 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(V) Science classrooms shall be provided at a ratio not to exceed 2:1 of science classrooms to science laboratories at the middle school and high school levels. The science laboratories shall be located convenient to the science classrooms they serve.

(VI) School districts with small class sizes may have science classrooms that provide a minimum of 32 square feet per student, and they may have science laboratories that provide a minimum of 36 square feet per student but not less than 600 square feet total at the elementary school level, a minimum of 38 square feet per student but not less than 700 square feet total at the middle school level, and a minimum of 42 square feet per student but not less than 800 square feet total at the high school level.

(v) If hazardous or vaporous chemicals are to be used in the science laboratories or science laboratory/classrooms, a separate chemical storage room shall be provided. The chemical storage room shall be separate from, and shall not be combined as part of, a preparation room or an equipment storage room; however, the chemical storage room may be located so that access is through a preparation room or equipment storage room. The chemical storage room shall be secure to prevent access to chemicals by students. One chemical storage room may be shared among multiple laboratories or laboratory/classrooms.

(vi) Each school science laboratory, science classroom, science laboratory/classroom, science preparatory room, and chemical storage room shall include the following provisions.

(I) A built-in fume hood shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in fume hood should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The exhaust shall be vented to the outside above the roof and away from air vents.

(II) A built-in eye/face wash that can wash both eyes simultaneously shall be provided in each room where hazardous chemicals are used by instructors and/or students. The eye/face wash shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season should consider a tepid water system with a heated source.

(III) A built-in safety shower shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in safety shower should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The safety shower shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to

come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season should consider a tepid water system with a heated source.

(IV) Ventilation systems serving science rooms shall be designed and constructed so that under normal operation the return air from the science rooms is not recirculated into non-science areas. In the chemical storage rooms, a ventilation system shall exhaust the air to the outside, and shall not be recirculated back into the space.

(V) An exhaust fan that is controlled by the instructor shall be provided in all rooms where hazardous or vaporous chemicals are to be used or stored. The exhaust fan shall be of sufficient size to exhaust the total volume of air in the room within 15 minutes. The exhaust shall be vented to the outside above the roof and away from air vents.

(VI) A minimum of 6 linear feet of total horizontal workspace, such as lab stations, lab tables, countertops, desktops, or some combination of these, shall be provided for each student in each middle school and high school science laboratory and science laboratory/classroom.

(VII) If electricity, gas, and/or water are provided in student areas, emergency shut-off controls shall be provided for each in a location accessible to the instructor but not easily accessible to students.

(vii) Special education classrooms shall have a minimum of 400 square feet per room. School districts with small class sizes may have rooms that provide a minimum of 40 square feet per student.

(viii) Specialized classrooms not otherwise identified within these standards shall at a minimum comply with the requirements specified in subparagraph (B) of this paragraph.

(ix) Compliance with the standards specified in clauses (iii) and (iv) of this subparagraph will be evaluated based on the average class size in those classrooms.

(D) Major support areas.

(i) Primary gymnasiums or physical education space, if required by the district's educational program, shall have a minimum of 3,000 square feet at the elementary school level; 4,800 square feet at the middle school level; and 7,500 square feet at the high school level.

(ii) A school district shall consider the School Library Standards and Guidelines as adopted under Texas Education Code, §33.021, when developing, implementing, or expanding library services. Libraries for campuses with a planned student capacity of 100 or less shall be a minimum of 1,400 square feet. Libraries for campuses with a planned student capacity of 101 to 500 shall be a minimum of 1,400 square feet plus an additional 4.0 square feet for each student in excess of 100. Libraries for campuses with a planned student capacity of 501 to 2,000 shall be a minimum of 3,000 square feet plus an additional 3.0 square feet for each student in excess of 500. Libraries for campuses with a planned student capacity of 2,001 or more shall be a minimum of 7,500 square feet plus an additional 2.0 square feet for each student in excess of 2,000. A school district that plans to locate more than 12 student computers in the library shall add 25 square feet of space for each additional computer anticipated. The space allotments within the library shall be based on a formula of 30% for the reading/instructional area and reference/independent study area; 45% for the stack area, circulation desk/area, and computer/on-line reference areas; and 25% for the

necessary ancillary areas. Windows shall be placed so that adequate wall and floor space remains to accommodate the shelving necessary for the library collection size established by the School Library Standards and Guidelines.

(6) It is not the intent of these standards to limit the use of nontraditional, alternative, sustainable, and/or innovative school designs. A nontraditional design model is one that works to break down the scale of the school and to improve the connection of the student to the resources available within the school environment. If a school district chooses to use a nontraditional model, the following provisions shall apply.

(A) The instructional spaces where teachers will instruct groups of students in specialized coursework shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (5)(C) of this subsection.

(B) Large group lecture spaces that do not use tables or desks for the students shall have a minimum of 15 square feet per student. Large group lecture spaces that do use tables or desks for the students shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (5)(B) of this subsection. A minimum of 150 square feet shall be provided for each small group, conference, or office space area or room.

(C) An individual student learning area that is assigned to a specific student shall have a minimum of 35 square feet. An individual student learning area that is not assigned to a specific student shall have a minimum of 25 square feet.

(D) If necessary under the design model, up to half of the reading/reference area function of the library may be dispersed throughout the facility outside the normal library boundaries. The sum total square footage of all library-related areas shall meet the minimum square feet specified for libraries in paragraph (5)(D)(ii) of this subsection.

(7) Other space requirements should be developed from school district design criteria as required to meet educational program needs.

(e) Educational adequacy. A proposed new school facility or major space renovation of an existing school facility meets the conditions of educational adequacy if the design of the proposed project is based on the requirements of the school district's educational program, the educational specifications, and the student population that it serves.

(f) Construction quality.

(1) Districts with existing building codes.

(A) A school district located in an area that has adopted local construction codes shall comply with those codes (including building, fire, plumbing, mechanical, fuel gas, energy conservation, and electrical codes). The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority. If the local building authority does not require a plan review, then a qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a certified building code consultant or a third party architect or engineer. A certified building

code consultant is a person who is certified by either the ICC; International Conference of Building Officials (ICBO); Southern Building Code Congress International, Inc. (SBCCI); or Building Officials and Code Administrators International (BOCAI). Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment and with the approval of the local building authority, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(B) For school facilities projects subject to these standards, and where not otherwise required by local code, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the International Building Code (IBC) and International Fire Code (IFC).

(C) As part of their school facilities projects and where not otherwise required by local code, school districts should consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. In absence of a local code, each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(D) If the local building authority does not conduct reviews and inspections during the course of construction of the facility, then a qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who is certified by either the ICC, ICBO, SBCCI, Inc., or BOCAI.

(2) Districts without existing building codes.

(A) A school district located in an area that has not adopted local building codes shall adopt and use the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes from the latest edition of the family of International Codes as published by the ICC; and the National Electric Code as published by the NFPA. As an alternative, a school district may adopt the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes as adopted by a nearby municipality or county. A qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a certified building code consultant or a third party architect or engineer. A certified building code consultant is a person who is certified by either the ICC, ICBO, SBCCI, or BOCAI. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment, may allow a limited

number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(B) For school facilities projects subject to these standards, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.

(C) As part of their school facilities projects, school districts should consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. Each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(D) A qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction of the facility for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who is certified by either the ICC, ICBO, SBCCI or BOCAI.

(3) Other provisions.

(A) For school facilities projects subject to these standards, an adequate technology, electrical, and communications infrastructure shall be provided. To ensure the adequacy of the infrastructure, the school district and the architect or engineer shall seek the input of the school district staff, including, but not limited to, the technology director, the library director, the program directors, the maintenance director, and the campus staff, in the planning and design of the infrastructure.

(B) As part of their school facilities projects, school districts should consider the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. School districts should consult with a qualified indoor air quality specialist during the design process to ensure that the potential for indoor air quality problems after construction and occupancy of a facility is minimized. School districts should utilize the voluntary indoor air quality guidelines adopted by the Texas Department of Health under the Health and Safety Code, Chapter 385. School districts should also utilize the "Indoor Air Quality Tools for Schools" program administered by the U.S. Environmental Protection Agency.

(C) As part of their school facilities projects, school districts should consider the use of sustainable school designs. A sustainable design is a design that minimizes a facility's impact on the environment through energy and resource efficiency.

(D) School district facilities shall comply with the "Texas Accessibility Standards" as promulgated under the Texas Civil Statutes, Article 9102, Architectural Barriers Act, as prepared and administered by the Texas Department of Licensing and Regulation.

(E) School district facilities shall comply with the provisions of the Americans with Disabilities Act of 1990 (Title I and Title II).

(F) School district facilities shall comply with all other local, state, and federal requirements as applicable.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303135
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: June 9, 2003
Proposal publication date: December 6, 2002
For further information, please call: (512) 463-9701

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 359. WATER BANKING

31 TAC §359.2, §359.14

The Texas Water Development Board (the board) adopts amendments to 31 TAC §359.2 and §359.14, concerning Water Banking, without changes to the proposed amendments as published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2919) and will not be republished. The amendments are adopted to update a definition and to change the requirement for fee schedule approval. The amendments will provide cleanup and clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The board adopts amendment to §359.2, Definitions, to update the definition of "Commission" from the "The Texas Natural Resource Conservation Commission" to "The Texas Commission on Environmental Quality," to reflect the agency's name change. Amendment to §359.14, Fees, is adopted to change the requirement for approval of the fee schedule from two years, to an as needed basis.

The original intent in adopting the fee schedule revisions every two years was to provide an adjustment to the fees if market prices made the amount unduly burdensome and interfered with the use of the water bank for marketing. However, based on the water bank activities to date, staff considers the current fee structure reasonable and does not, at this time, foresee any significant water market changes or objections to the fee schedule by the public that would warrant a biennial reconsideration of the fee.

No comments were received on the proposed amendments.

Statutory authority: Water Code, §6.101 and §15.703(b).

Cross reference to statute: Water Code, Chapter 15, Subchapter K and Chapter 11, Subchapter E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2003.

TRD-200303165

Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: June 10, 2003
Proposal publication date: April 4, 2003
For further information, please call: (512) 463-7981

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

**CHAPTER 152. INSTITUTIONAL DIVISION
SUBCHAPTER B. MAXIMUM SYSTEM
CAPACITY OF THE INSTITUTIONAL DIVISION**

37 TAC §152.12

The Texas Board of Criminal Justice adopts amended rule §152.12, Methodology for Changing Maximum Unit and System Population, without change to the text as proposed in the March 28, 2003 issue of the *Texas Register* (28 TexReg 2707). The purpose of the amendment is to memorialize proposed additions to capacity at the below-listed TDCJ units, in accordance with the "H.B. 124" process embodied in Texas Government Code §§499.102 et seq., originally enacted at Acts 1991, 72nd Leg., ch. 655: Garza East, Garza West, & Middleton (additional 128 beds each); and Wheeler, Ney, Havins, and Henley (additional 72 beds each). The total is 672 beds, with 384 in the Institutional Division and 288 in the State Jail Division.

No public comments were received. In accordance with Government Code §499.013, notices to inmates at the affected units were posted, and three letters were received from inmates at the Garza East Unit. The comments are summarized as follows: (1) the notice states that only two bunks are to be added to each of 32 dorms and yet four have been added; (2) concern over visibility of certain bunks given the placement of the new bunks; (3) concern that provision of meals, clean clothing, and footwear will be compromised; (4) concern that plumbing repairs already take "forever" to get done; (5) concern that square footage standards will be compromised; and (6) concern that inmates will need more places to sit for writing, eating, talking and playing games. The rule was not amended, but responses were sent to the inmates, summarized as follows: (1) each "bunk" being added means "bunk bed," so there are two beds for each bunk; (2) decisions regarding the location of the two additional bunks in the various dormitories will be jointly considered by design and security staff, with safety/security as primary concerns; (3) operation support issues (food, clothing, footwear) will be reviewed with unit staff, but these items are provided to a unit based on the inmate headcount so there should be no diminution based on the new capacity; (4) maintenance data shows numerous plumbing work orders in the dormitory in question, many of which were due to abuse of the fixtures, but as of the end of March, 2003, there were no open plumbing work orders in the dormitory; (5) the additional capacity will not negatively impact square footage standards; and (6) the additional capacity will not negatively impact standards as to the placement of furnishings.

This proposal has been forwarded to the governor and the attorney general in accordance with Government Code §499.106 and §499.107, and has been accepted and approved, respectively, by those offices. The proposal has also been forwarded to the Legislative Budget Board in accordance with Government Code §499.102, which identified construction and start-up capital costs in FY 2003 as \$223,770, and operating costs for each fiscal year from 2004 through 2007 as \$2,404,266 per fiscal year.

The amended rule is adopted under Texas Government Code, §492.010 and §499.102 et seq.

Cross Reference to Statutes: Texas Government Code §499.102 et seq.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2003.

TRD-200303202

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Effective date: June 12, 2003

Proposal publication date: March 28, 2003

For further information, please call: (512) 463-0422



CHAPTER 157. STATE JAIL FELONY FACILITIES

SUBCHAPTER C. PHYSICAL PLANT STANDARDS

37 TAC §157.87

The Texas Board of Criminal Justice adopts amended rule §157.87, Offender Housing, with changes to the text as proposed in the March 28, 2003 issue of the *Texas Register* (28 TexReg 2707). The purpose of the amendments is to increase the permissible dormitory capacity in state jails from 54 to 64 offenders, decrease the shower-to-offender ratio from 1:12 to 1:15, make conforming amendments to requirements for multi-occupancy cells and special management cells, and make minor grammatical changes.

One comment was received.

Comment: With the additional beds, will there be a compliance problem with the standards for multi-occupancy and special management cells?

Response: The board agrees that this would have been a problem and proposes revisions to subsections (2) and (3) accordingly.

The new rule is adopted under Texas Government Code, §492.010 and Chapter 507.

Cross Reference to Statutes: Texas Government Code Chapter 507.

§157.87. Offender Housing.

Offender housing areas are the basis for institutional living and as such must promote the safety and well-being of staff and offenders. All offender areas shall provide unobstructed view of all offenders by security staff from outside the secure areas.

(1) Dormitories. Dormitories shall accommodate nine to 64 general population offenders and shall contain not less than 40 square feet of clear floor space for one offender, plus 18 square feet of clear floor space per each additional offender. Dormitories shall have a bunk for each offender. Double bunks are acceptable. A lavatory capable of providing drinking water and a toilet for each group of eight offenders or increment thereof shall be provided in each dormitory.

(2) Multi-occupancy cells. Multi-occupancy cells shall accommodate one to eight offenders and shall contain not less than 40 square feet of clear floor space for one offender plus 18 square feet of clear floor space per each additional offender. Each multiple-occupancy cell shall have a bunk for each offender, one lavatory capable of providing drinking water and one toilet. Double bunks are acceptable. The sum of the capacities of multiple-occupancy cells and the capacities of special management cells shall be at least 10% of the state jail population served by the facility.

(3) Special management cells. Special management cells shall approximate the living conditions provided to general population offenders and shall house no more than two offenders. Special management cells shall contain not less than 40 square feet of clear floor space for one offender plus 18 square feet of clear floor space for the second offender and shall permit the assigned offender to speak with and be observed by staff. They shall have a bunk, toilet, lavatory capable of providing drinking water, desk, and seating. The capacity of special management cells shall be at least 2.5% of the state jail population served by the facility.

(4) Medical isolation cells. Medical isolation cells shall be accessible for wheelchair-bound offenders and shall contain a hospital-type bed, shower, lavatory capable of providing drinking water and a toilet. A vestibule shall separate the medical isolation cell(s) from adjacent spaces. Mechanical systems for medical isolation cells shall insure that airborne pathogens are not released into the outside air or into building spaces. The travel path from the medical isolation room to the ambulance evacuation area shall be sized for a gurney. Each facility of less than 1,000 offenders shall contain at least one medical isolation cell and facilities with more than 1,000 offenders shall contain at least two medical isolation cells. The number of medical isolation cells do not count towards the facility's rated capacity.

(5) Bunks. Bunks shall be fire-resistant and not less than 2 feet 3 inches wide and 6 feet 3 inches long. Bunks shall be securely anchored and should have closeable storage at least 12 inches by 24 inches by 24 inches in size for each offender.

(6) Water closets and lavatories. Water closets and lavatories shall be constructed in such manner and of such material so as to resist vandalism. A combination toilet and lavatory constructed of vandal-resistant material is recommended.

(7) Additional furnishings. For special management cells, multiple-occupancy cells and dormitories may include desks and seats (mandatory for single cells), lockers, mirrors, detention-type electric light fixtures, detention-type heating and ventilation grilles and showers. Where light fixtures or other appurtenances are recessed in or otherwise made an integral part of walls or ceilings, provisions should be made to prevent destruction or removal.

(8) Dayrooms. Dayrooms shall be provided in close proximity to all offender sleeping areas except for medical isolation cells. Medical isolation cells do not get dayrooms. Space shall be provided for varied offender activities. Different classifications of offenders may only be mixed in accordance with the State Jail Classification Plan.

(9) Space requirements. Dayrooms for dormitories shall accommodate not more than 64 offenders. Dayrooms shall contain at

least 40 square feet of clear floor space for one offender plus 18 square feet of clear floor space for each additional offender. Dormitory dayrooms may be contiguous with offender sleeping areas.

(10) Space requirements. Dayrooms for multiple-occupancy cells shall accommodate not more than 24 offenders. Dayrooms shall contain at least 40 square feet of clear floor space for one offender, plus 18 square feet of clear floor space for each additional offender. Multi-occupancy cell dayrooms shall be separated from multi-occupancy cells with controlled access from one to the other.

(11) Furnishings. Dayrooms for dormitories and multiple-occupancy cells shall be equipped with a lavatory capable of providing drinking water and a toilet for each group of eight offenders or increment thereof. A mirror shall be provided at each lavatory. A shower shall be provided for each group of 15 offenders or increment thereof. Each dayroom shall be suitably furnished with, but not limited to, seating and tables to accommodate the number of offenders confined therein, and may provide dining facilities and other activities. A utility sink shall be provided. Multiple-occupancy cell dayrooms shall be separated from multiple-occupancy cells with controlled access from one to the other.

(12) Space requirements. Dayrooms for special management cells shall contain at least 100 square feet of clear floor space for the first offender and 18 square feet of clear floor space for each additional offender. The number of special management dayrooms shall be at least 8.0% of the number of special management cells.

(13) Furnishings. Dayrooms for special management cells shall contain a toilet, a lavatory capable of providing drinking water, a table with seating for four offenders. They should also contain, at a minimum, an exercise mat, a television, and a chinning bar.

(14) Holding rooms. Holding rooms shall accommodate no more than 12 offenders each and shall contain 40 square feet of clear floor space for the first offender and 18 square feet of clear floor space per each additional offender. Furnishings shall include benches against the walls of the rooms to afford the best possible visibility of offenders by security staff. Each holding room for two or more offenders shall provide a floor drain and cleanable floor surface. Offender reception areas shall contain at least two single occupancy holding rooms containing at least 40 square feet of clear floor space. Each holding cell shall contain one toilet and lavatory capable of dispensing drinking water.

(15) Tables and benches. Tables and benches should be constructed of materials which will reduce maintenance. They shall be fire-resistant and securely anchored to floor or wall surfaces. Benches shall be not less than 12 inches wide, and linear seating dimensions shall be not less than 18 inches per person to be seated at any one time. Stools shall not be less than 12 inches in diameter.

(16) Toilets. Should be constructed in such manner and of such material so as to resist vandalism. A combination toilet and lavatory constructed of vandal-resistant material is recommended. Offenders should have access to toilets and hand-washing facilities 24 hours per day and are able to use toilets without staff assistance when they are confined in their sleeping areas. Dormitory and multiple-occupancy cell toilets are provided at the rate of one for every group of eight offenders or increment thereof. Urinals may be substituted for up to one-half of the toilets in male facilities.

(17) Lavatories. Lavatories shall be constructed in such manner and of such material so as to resist vandalism. A combination

toilet and lavatory constructed of vandal-resistant material is recommended. Offenders have access to operable wash basins with temperature controlled hot and cold running water in the housing units at a minimum ratio of one lavatory for every eight offenders.

(18) Showers. Shower areas shall be not less than 2 feet 6 inches square per showerhead and not less than 7 feet high. Construction should be of materials which resist the action of soap and water and which cannot be easily damaged by acts of vandalism. Drying areas of not less than 2 feet 6 inches square sloped to a drain should be provided adjoining the shower entrance. Offenders have access to operable showers with temperature controlled hot and cold running water at a minimum ratio of one shower to every 15 offenders. Water is thermostatically controlled to temperatures ranging from 100 to 108 degrees Fahrenheit to ensure the safety of offenders.

(19) Accommodations for the disabled. All facilities shall comply with the Americans with Disabilities Act (42 United States Code, Section 12101 and 28 Code of Federal Regulations Parts 35 and 36) and the Elimination of Architectural Barriers Act (Texas Civil Statutes, Article 9102).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2003.

TRD-200303203

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422



CHAPTER 160. RECEIPT AND DISBURSEMENT OF WORK PROGRAM RESIDENTS' EARNED FUNDS

37 TAC §§160.1 - 160.8

The Board of the Texas Department of Criminal Justice adopts the repeal of 37 TAC Chapter 160, Receipt and Disbursement of Work Program Residents' Earned Funds, and all subsections from §§160.1 - 160.8 with no changes to the proposed text as published in the April 11, 2003 issue of the *Texas Register* (28 TexReg 3035). The purpose of the repeal deletes language that describes a practice that is obsolete and no longer within the agency's authority.

No comments were received regarding this repeal.

The repeal is adopted under Texas Government Code, §492.010.

Cross Reference to Statutes: Texas Government Code, §492.010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Carl Reynolds
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For further information, please call: (512) 463-0422

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING

40 TAC §175.2

The Veterans Land Board of the State of Texas (the "Board") adopts the amendment to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.2 relating to Loan Eligibility Requirements of the General Rules of the Veteran Land Board, without changes to the text as published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3035). This amendment changes the definition of "surviving spouse" in §175.2(a)(5) to match the federal definition. This amendment also changes §175.2(c)(2) so that the surviving spouse of a veteran is eligible, if the veteran died as a result of a service-connected cause and would have been otherwise eligible, but did not enter military service from Texas.

Sections 161.001(b) and 162.001(b) of the Texas Natural Resources Code authorize the Board to change the definition of Veteran if it is in the best interest of the programs. The Board finds that over 70 percent of the housing loans are made with a guarantee by the USDVA. The Board finds that it serves the best interest of the programs if a surviving spouse that is eligible for federal housing benefits is also eligible for the Board programs. The amendment to §175.2(a)(5) will incorporate the federal definition and modifications of the term "surviving spouse," including any future changes. The Board also finds that the present rule does not extend the benefits of the loan programs to the surviving spouse of a Veteran that would have been eligible for a loan, who has died as a result of a service-connected cause, but did not enter the service with Texas as his home of record. The amendments to §175.2(c)(2) will change the eligibility of a surviving spouse to include the surviving spouse of a Veteran who died as a result of a service-connected cause and who was a legal resident of Texas at the time of his or her death. (§177.5(b) of Title 40, Part 5, Chapter 177 of the Texas Administrative Code automatically incorporates by reference the changes in this amendment.)

The board withdrew a prior proposed amendment to §175.2(a)(5) to include both of these changes to §175.2 in one proposed amendment.

No comments were received regarding the proposed amendment.

The amendment to this section is adopted under the Natural Resources Code, Title 7, Chapter 161, §§161.001, 161.061, 161.063, 161.218, 161.222, 161.233, and 161.283, 161.503, 162.001, and Chapter 162, §§162.001, 162.003, and 162.011. These sections authorize the Board to adopt rules that it considers necessary and advisable for the Land Program and for the Veterans Housing Assistance Program.

The adopted amendment affects §161.001 and §162.001 of the Natural Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303122

Larry L. Laine
Chief Clerk, Deputy Commissioner
Texas Veterans Land Board
Effective date: June 9, 2003
Proposal publication date: April 11, 2003
For further information, please call: (512) 305-9129

◆ ◆ ◆
40 TAC §175.4

The Veterans Land Board of the State of Texas (the "Board") adopts the amendment to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.4 relating to Land Description of the General Rules of the Veteran Land Board, with non-substantive changes to the text as published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3037). This amendment allows the Chairman to accept a survey or field notes, provided a title insurance company will delete the survey exception in its policy based on that survey. The amendment also provides that any survey or field notes presented to the board includes a license by the surveyor to the Board and the veteran purchaser for future use.

Section 161.061 of the Texas Natural Resources Code authorizes the Board to formulate policies and rules necessary and not in conflict with the law to ensure the proper administration of the program. The Board finds that its current requirements for a survey may exceed the requirements for a title company to insure a survey. The amendment to §175.4 will allow the chairman to accept a field note description or survey and waive any requirement in the rule if a title company will delete the survey exception in its policy. In addition, the Board notes that some surveyors may claim a copyright in a survey or field notes prepared for a transaction involving the Board. The Board may use the survey or field notes in future transactions, and therefore provides for a license from the surveyor. The Board has made a non-substantive change to §175.4(c) by deleting the word "shall" and making other appropriate grammatical changes. The amendment to §175.4 includes a requirement for that license.

No comments were received regarding the proposed amendment.

The amendment to this section is adopted under the Natural Resources Code, Title 7, Chapter 161, §§161.001, 161.061, 161.063, 161.214, 161.218, 161.222, 161.233, and 161.283. These sections authorize the Board to adopt rules that it considers necessary and advisable for the Land Program.

The change affects §161.061 and §161.214 of the Texas Natural Resources Code.

§175.4. *Land Description.*

(a) Land selected to be purchased by the board must be described by a legally sufficient metes and bounds description. The property description must:

(1) contain a general description of the land, specifying the acreage contained, the original survey(s) or grant(s) with abstract number(s), survey number(s) and block designation, if applicable, and the county in which the tract is located (if the tract is divided by a county line, the appropriate abstract numbers and acreage on each side of the county line will be shown). The general description shall also contain the deed reference to the parent tract including grantor, grantee, date of instrument, and volume and page of recording. Additional references to other instruments in the chain of title may be referred to if appropriate;

(2) contain a specific description of the land, defining each side of the tract by course and distance or appropriate and complete curve data, identifying and describing monuments at each corner, and further identifying the land by calls for other natural and artificial objects on and along the boundaries and by calls for and reference to adjoining properties where appropriate;

(3) be tied to a corner of an original grant or survey if such corner is locatable and if the tie is not impractical to obtain. If it is impossible or impractical to tie to a corner of an original grant or survey the tract should tie to a locatable corner of the parent tract or any of the adjinders;

(4) include a description, either by metes and bounds or center line, of the access easement from the tract to an existing public road of all tracts which do not abut a public road.

(b) If the tract selected is in a subdivision, a lot and block description of the tract may be substituted for the metes and bounds description. If a lot and block description is to be used, the board must be furnished a copy of the recorded subdivision plat. This plat must show the recording information and the required signatures of the governmental entity (commissioners court, city council, etc.) authorized to accept such subdivision plat. Easements as necessary for access to a public road from all tracts must be clearly shown on the subdivision plat together with appropriate language dedicating such easement to the public or to the owners of tracts in the subdivision. All the data required in subsection (a) of this section should be shown on the face of the plat, including courses and distances for all lot lines and areas for each lot. All plats accepted subsequent to the adoption of this section shall identify the size and type of monument set at each corner of every lot. If a lot is part of a subdivision already of record where monumentation is not shown, a survey plat shall be furnished indicating monuments set or found at all corners of the tract together with sufficient ties to locate the lot within the subdivision.

(c) All metes and bounds descriptions and survey plats shall bear the seal and original signature of the surveyor preparing the same. Any field notes or survey plat prepared for and used in any Veterans Land Board transaction includes a license from the surveyor to the board and the veteran purchaser to copy and use the field notes in that transaction and in any future transactions involving the surveyed property.

(d) Metes and bounds descriptions must be prepared from a survey of the property made on the ground. The survey should be made in such manner to be generally acceptable to title companies in the State of Texas for the purpose of deleting the survey exception clause.

(e) Each corner of the tract of land shall be marked by concrete or metal monuments or other durable monuments generally used in the area. A description of each monument set or found and its location, with witnesses as available, shall be incorporated into the metes and bounds description of the property.

(f) When a roadway or easement crosses a tract, it shall be described sufficiently to enable its location throughout the tract and its area to be determined.

(g) Property descriptions and subdivision plats will be examined by the board for acreage, closure, and sufficiency. The board's determination of these items will control.

(h) The surveyor should be instructed to do a proper boundary survey of the land to be conveyed according to the record boundaries of the tracts involved. Any encroachments by existing perimeter fences into the subject tract or into adjacent tracts should be shown together with the area of any lands lying between the record boundaries and the existing occupation. Any occupation on the ground not conforming to the record boundaries should be shown on a plat of survey and fully explained in an accompanying surveyors report.

(i) The chairman may waive any of the foregoing requirements and accept a survey deemed sufficient by the title company to permit deletion of the survey exception clause.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303123

Larry L. Laine

Chief Clerk, Deputy Commissioner

Texas Veterans Land Board

Effective date: June 9, 2003

Proposal publication date: April 11, 2003

For further information, please call: (512) 305-9129



40 TAC §175.5

The Veterans Land Board of the State of Texas (the "Board") adopts the amendment to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.5 relating to Appraisal of Land of the General Rules of the Veteran Land Board without changes to the text as published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3038). This amendment corrects a reference to another section.

Section 161.061 of the Tex. Nat. Res. Code authorizes the Board to adopt rules. Section 161.212 of the Texas Natural Resources Code requires an appraisal of the land. The Board finds that the reference in §175.5(a) to §175.6(c) is incorrect. A previous rule change now requires that the reference be updated to §175.6(d). This amendment changes the reference to the correct section.

No comments were received regarding the proposed amendment.

The amendment to this section is adopted under the Natural Resources Code, Title 7, Chapter 161, §§161.001, 161.061, 161.063, 161.218, 161.222, 161.233, and 161.283. These sections authorize the Board to adopt rules that it considers necessary and advisable for the Land Program.

The change affects §161.212 of the Texas Natural Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303124

Larry L. Laine

Chief Clerk, Deputy Commissioner

Texas Veterans Land Board

Effective date: June 9, 2003

Proposal publication date: April 11, 2003

For further information, please call: (512) 305-9129



40 TAC §175.18

Veterans Land Board of the State of Texas (the "Board") adopts the amendment to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.18 relating to Resale of Forfeited Land of the General Rules of the Veteran Land Board, without changes to the text as published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3039). This amendment allows the Board to sell forfeited or foreclosed land under either a contract for sale or a note and deed of trust.

Section 161.319(a) of the Texas Natural Resources Code authorizes the Board to sell forfeited tracts under terms and conditions and at the time and in the manner prescribed by the board in its rules. Subchapter K of Chapter 161 of the Texas Natural Resources Code allows the board to finance land to Veterans secured by a mortgage, deed of trust, or other lien. The Board finds that it is in the best interest of the program if the Board can sell forfeited or foreclosed land under either financing method. The amendments to §175.18 will allow sales of forfeited or foreclosed tracts under either a contract for sale or a note and deed of trust.

No comments were received regarding the proposed amendment.

The amendment to this section is adopted under the Natural Resources Code, Title 7, Chapter 161, §§161.001, 161.061, 161.063, 161.218, 161.222, 161.233, 161.283, 161.319, 161.501, 161.503, and 161.513. These sections authorize the Board to adopt rules that it considers necessary and advisable for the Land Program.

The change affects §§161.319, 161.501, and 161.513 of the Texas Natural Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303125

Larry L. Laine

Chief Clerk, Deputy Commissioner

Texas Veterans Land Board

Effective date: June 9, 2003

Proposal publication date: April 11, 2003

For further information, please call: (512) 305-9129



CHAPTER 177. VETERANS HOUSING ASSISTANCE PROGRAM

40 TAC §177.14

The Veterans Land Board of the State of Texas (the "Board") adopts the amendment to Title 40, Part 5, Chapter 177 of the Texas Administrative Code, §177.14 relating to Loan Amounts, of the Veterans Housing Assistance Program without changes to the text as published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3040). The adopted amendment allows the Board to set the maximum loan amount for a home improvement loan by resolution.

Section 162.003 of the Texas Natural Resources Code authorizes the Board to adopt rules to administer the Veterans Housing Assistance Program. Section 162.011 give the Board the authority to set the maximum principal amount of loans. The Board finds that the present limit for home improvement loans does not match lending practices prevalent in the residential mortgage lending industry. The adopted amendment to §177.14 will allow the board to increase the present limit for home improvement loans to match the lending industry and to make future changes by resolution.

No comments were received were the proposed amendment.

The amendment to this section is adopted under the Natural Resources Code, Title 7, Chapter 162, §§162.001, 162.003, and 162.011. These sections authorize the Board to adopt rules that it considers necessary and advisable for the Land Program.

The change affects §162.003 and §162.011 of the Texas Natural Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2003.

TRD-200303126

Larry L. Laine

Chief Clerk, Deputy Commissioner

Texas Veterans Land Board

Effective date: June 9, 2003

Proposal publication date: April 11, 2003

For further information, please call: (512) 305-9129



PART 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER E. MEMORANDUM OF UNDERSTANDING WITH OTHER STATE AGENCIES

40 TAC §702.421

The Texas Department of Protective and Regulatory Services (PRS) adopts new §702.421, without changes to the proposed text published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3043).

In the last legislative session, Senate Bill 367 amended the Human Resources Code by adding §22.037, which authorizes the development of a pilot program for community-based alternatives for persons with disabilities, and §22.038, which requires a Memorandum of Understanding (MOU) regarding the implementation of the pilot program. Each of the agencies involved, PRS, the Texas Department of Human Services (DHS) and the Texas Department of Mental Health and Mental Retardation (MHMR), are required to adopt the MOU. PRS has actively been involved in the development of the MOU. DHS and MHMR have adopted the MOU as a final rule. The justification for the section is to adopt by reference the rule containing the DHS MOU.

The new section will function by ensuring that the clients of each of the agencies involved in the MOU will know which services of the pilot program will be provided by each agency. It is anticipated that the interagency cooperation will result in better services to clients served jointly by the three agencies.

No comments were received regarding adoption of the section.

The new section is adopted under the Human Resources Code, §40.029, which authorizes the department to adopt rules that facilitate the implementation of departmental programs,

The new section implements the Human Resources Code, §22.037 and §22.038.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2003.

TRD-200303200

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: June 12, 2003

Proposal publication date: April 11, 2003

For further information, please call: (512) 438-3437



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §330.66(c)(7)

(A) I, _____, state that I have knowledge of the facts set forth in the plans and that these facts are true and correct, to the best of my knowledge and belief. I further state that, to my knowledge and belief, the project does not in any way violate any law, rule, ordinance, or decree of the duly authorized governmental entity having jurisdiction. I further state that I am the facility owner or operator or am authorized to act for the owner or operator.

(Signature)

(Type Name and Title)

(Date)

(B) Notary public's certificate: Subscribed and sworn to before me, by the said _____, this ____ day of _____ 20 [19]____, to certify which witness my hand and seal of office.

Notary Public in and for _____ County, Texas.

My commission expires on _____.

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Clean Air Act, the Texas Water Code, and Texas Solid Waste Disposal Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act, the Texas Water Code, and Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas and the *State of Texas v. Sebastian Ordonez, Individually and d/b/a Bright Marble Co.*, Cause No. 2002-35882, in the 295th Judicial District Court of Harris County, Texas

Nature of Defendant's Operations: Defendant owns and operates a cultured marble (thermoset resin) manufacturing facility located at 9103 F.M. 1960 West, Houston, Harris County, Texas. Harris County and the State of Texas alleged that Defendant operated without proper authority, discharged and emitted air contaminants creating a nuisance odor and caused adverse effects on human health, and discharged industrial waste onto the ground and into or adjacent to water of the State.

Proposed Agreed Judgment: The Agreed Permanent Injunction and Final Judgment requires Defendant to pay Forty-One Thousand Five Hundred Dollars (\$41,500.00) in civil penalties to be split equally between Harris County and the State of Texas, and Two Thousand Five Hundred Dollars (\$2,500.00) in attorney fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at 512 463-2110.

TRD-200303246
Office of the Attorney General
Nancy S. Fuller
Assistant Attorney General
Filed: May 27, 2003

Texas Building and Procurement Commission

TBPC Project No. 03-001-771

INVITATION FOR BID (IFB) NOTICE

TBPC Project No. 03-001-771

Project Name: Warehouse 1100 W. 45th Street, Austin, Texas For the Texas School for the Blind and Visually Impaired

Sealed Bids for this project will be received until **3:00 P.M., June 23, 2003, at the Bid Room, Room No. 180, 1711 San Jacinto, Austin, TX 78701.** See the IFB for other delivery choices.

Plans and specifications may be obtained from the Architect, Marmon Mok, 700 N. St. Mary's, Suite 1600, San Antonio, Texas 78205, Phone (210) 223-9492, Fax (210) 223-2582 for a deposit of \$30.00, refundable upon return of a complete, unmarked set(s).

A mandatory (must attend and sign in) Pre-Bid Conference will be held at the Texas School for the Blind and Visually Impaired campus, 1100 West 45th Street, Building 500, Room 153, Austin, Texas, at 10:00 a.m., Monday, June 2, 2003. The TBPC will reject Bids submitted by firms that did not attend the mandatory Pre-Bid Conference.

Only bids submitted on the official CONTRACTOR'S BID FORM found in the Project Manual will be accepted.

The IFB may be obtained by contacting TBPC Internal Procurement, Attn: Deborah Norwood (Fax: 512-463-3360), deborah.norwood@tbpc.state.tx.us or through the Electronic State Business Daily at:

http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=47439

No oral explanation in regard to the meaning of the Drawings and Specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of Drawings and Specifications and all communications concerning the project shall be communicated in writing to the Deborah Norwood via fax at (512) 463-3360 or via email at deborah.norwood@tbpc.state.tx.us for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Specifications, which will be forwarded to all known Bidders and its receipt by the Bidder shall be acknowledged on the Contractor's Bid Form or on the face of the Addendum and returned with the bid.

TRD-200303199
Cindy deRoch
General Counsel
Texas Building and Procurement Commission
Filed: May 23, 2003

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions

affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following projects during the period of May 9, 2003, through May 15, 2003. The public comment period for these projects will close at 5:00 p.m. on June 20, 2003.

FEDERAL AGENCY ACTIONS:

Applicant: Wayne Harper; **Location:** The project is located approximately 13.3 miles southeast of the City of Orange, in the Nelda Stark Unit of Bessie Heights Marsh, north of and contiguous with the Neches River in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates: Zone 15; Easting: 408598; Northing: 3323818. **Project Description:** A Public Notice for this proposal was originally published on May 28, 2002. The current notice is for revisions to the project plans and mitigation plan. The applicant requests authorization to retain approximately 0.52 acre of fill material that was placed into open waters of Bessie Heights Marsh without a Department of the Army permit. The applicant also proposes to place an additional 0.80-acre of fill on the site to create a pad site for oil and gas drilling operations. The existing and proposed fills are necessary to drill and produce the Stark No. 16 Well. If the Well is successful, the applicant will reduce the size of the production pad to 160-feet by 180-feet. If the well is nonproductive, the access road and drill site will be graded to marsh elevation and the excess material spread in a manner conducive to the establishment of emergent marsh. The site will then be planted with marsh species. CCC Project No.: 03-0142-F1; Type of Application: U.S.A.C.E. permit application #22684 (Rev.) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The consistency review for this project may be conducted by Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

Applicant: Mark Foster; **Location:** The project is located on the south side of Bayshore Drive approximately 200 yards before the road dead-ends. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates: Zone 14; Easting: 675731; Northing: 3078631. **Project Description:** The applicant proposes to construct a bulkhead with riprap in front of it and place fill behind it to reclaim property. The bulkhead and fill would extend 76 feet into the bay from the existing west property line and 56 feet out from the east property line. The property is 206 feet wide. The applicant proposes to place approximately 152 cubic yards of fill below the plane of the MHT line and cover an area of approximately 4,100 square feet. Water depth in the proposed fill area was observed to be an average of -1.0 ft. MHT by a USACE official. Seagrasses have been observed near the proposed fill area but not in the area itself. CCC Project No.: 03-0145-F1; Type of Application: U.S.A.C.E. permit application #22994 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: Aransas County Navigation District; **Location:** The project is located on the Aransas Bay beach at the Rockport Beach Park in Rockport, Aransas County, Texas 78578. The project can be located

on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates: Beginning on the north end; Zone 14; Easting: 693481; Northing: 3101989. Ending on the south end; Zone 14; Easting: 692282; Northing: 3101420. **Project Description:** The applicant proposes to renourish approximately 4,800 feet of shoreline along the beach in front of Rockport Beach Park by placing clean sand approximately 100 feet seaward of the high, high tide (HHT) line. This results in placement of 15,530 yds³ of fill below the plane of the HHT. The applicant proposes to use approximately 750 yds³ of material that was previously dredged from Leggett Channel and is stockpiled on site. The remainder of the sand would come from onshore sources and would be brought to the site via trucks or barges, depending on the supplier. The entire project would involve placement of approximately 40,250 yds³ of material and would affect 8.3 acres of jurisdictional area. CCC Project No.: 03-0150-F1; Type of Application: U.S.A.C.E. permit application #18057(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: Forest Oil Corporation; **Location:** The project will originate in and/or through Blocks 52 and 53, High Island Area, OCS Federal Waters, Gulf of Mexico, Offshore, Texas. **Project Description:** Forest Oil and Gas Company has submitted to Minerals Management Service (MMS) an application for a Right-of-Way (ROW) pipeline for the construction, maintenance and operation of a 6-5/8" natural gas and condensate pipeline, 18,560 feet in length, to be installed in Lease, OCS-G-0509, Block 53, High Island Area, Offshore, Texas. The pipeline will be used to transport natural gas and condensate from Forest Oil Corporation's proposed Caisson (to be installed over Well No. 2A) in High Island Block 53 to energy Resources Technology's (ERT) High Island Block 52 "A" platform. CCC Project No.: 03-0152-F1; Type of Application: Pipeline ROW Application according to MMS Notice to Lessees No. 2002-G15 issued effective December 20, 2002 and in compliance with 15 CFR 930.

Applicant: Subsea 7; **Location:** The project is located north and parallel to Seawolf Parkway on Pelican Island and in the Galveston Ship Channel, adjacent to Galveston Bay, Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates: Zone 15; Easting: 325000; Northing: 3245000. **Project Description:** The applicant proposes to fill 4.58 acres of jurisdictional, adjacent freshwater wetlands with 7,630 cubic yards of fill material and concrete for the construction of a pipe fabrication plant. Additional, the applicant proposes to hydraulically dredge 4,500 cubic yards (0.79 acre) of waters of the U.S. within the Galveston Ship Channel to a depth of -30 feet mean sea level for the construction of a loading dock. A total of 4,500 cubic yards of material will be hydraulically dredged from the Galveston Ship Channel and placed within the Corps of Engineers San Jacinto Disposal Area on Galveston Island. The applicant also proposes to place fill into 0.47-acre of non-jurisdictional wetlands. CCC Project No.: 03-0157-F1; Type of Application: U.S.A.C.E. permit application #23017 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: Rutherford Oil Corporation; **Location:** The project is located approximately 3.2 miles northwest of Rollover Pass in State Tract 180, NE/2, East Galveston Bay, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Frozen Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 350,346.577; Northing: 3,268,238.697. **Project Description:**

The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of a marine barge rig, three wellheads, three well protectors, 15- by 20-foot production platform, mooring piles and appurtenant structures and equipment necessary to conduct oil and gas drilling and production operations. No dredging would be required for this project; however, flowlines will be buried three feet below the mud line by trenching. The water depth of East Galveston Bay at the proposed well locations is minus 5 feet mean low tide. The exact layout and location of structures and flowlines in relation to the wells is conceptual. Therefore, all the work would be performed within a 600-foot radius of the proposed well coordinates for Well Number 3. No oysters or reefs are located within a 600-foot radius of the proposed well locations. A soft mud bottom was found throughout the work area. In the event the wells produce, sales/transport pipelines would be reviewed individually. CCC Project No.: 03-0158-F1; Type of Application: U.S.A.C.E. permit application #23031 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §125-1387). NOTE: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

Applicant: City of Baytown; Location: The project is located in Tabbs Bayou, near the mouth of Goose Creek, at the State Highway 146 and Missouri Street intersection, east of the Fred Hartman Bridge, on the northern shore of the Houston Ship Channel, in Baytown, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Morgan's Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 307075; Northing: 3287978. Project Description: The applicant proposes to amend Permit Number 18176(03) to include the dredging of a total of 7,500 cubic yards of sediment out of the Bayland Park Marina and Tabbs Bayou and to replace wood piling channel markers as needed. The proposed dredging located within the marina, Area E, will cover approximately 7.90 acres. The proposed dredging located along the marina channel, Area D, and the boat channel through Tabbs Bayou to Goose Creek, Areas A, B, & C, will cover approximately 4.72 acres. This is a total of 12.62 acres of dredge area. The applicant proposes to place the dredge material in two containment areas. To contain the dredge material, these areas will have 24-foot high earthen berms. Combined, the placement areas will be able to hold 7,500 cubic yards of dredge material. The applicant has performed soil testing within the dredged area. CCC Project No.: 03-0159-F1; Type of Application: U.S.A.C.E. permit application #18176(04) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Motiva Enterprises; Location: The project is located at the Motiva Port Arthur Terminal, in the Port Arthur Ship Channel/Turning Basin, approximately 1/2 mile south of the Martin Luther King Bridge, in Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. Approximate UTM Coordinates: Zone 15; Easting: 407288; Northing: 3300120. Project Description: The applicant proposes to rehabilitate their existing Berth #2. The existing timber dock and piles will be removed along with the existing breasting dolphins and timber bulkhead. The rehabilitation work will include new mooring and breasting structures, a dock platform, marine loading arms, gangway platform, an approach way, and a pipe rack. New concrete articulating mat for shoreline stabilization is being evaluated for authorization under Nationwide Permit (NWP) 13 for shoreline stabilization. The fender line of the proposed dock rehabilitation project will not extend any further waterward than the existing dock and fender line. CCC

Project No.: 03-0160-F1; Type of Application: U.S.A.C.E. permit application #18632(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200303179

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: May 21, 2003

◆ ◆ ◆ Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #156a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Marble Falls Independent School District (Marble Falls ISD). Comptroller reserves the right, in its sole discretion, to award one or more contracts for a review of the Marble Falls ISD included in this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about August 4, 2003.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, June 6, 2003, between 10 a.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: <http://esbd.tbpc.state.tx.us> after 10 a.m. (CZT) on Friday, June 6, 2003.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Monday, June 23, 2003. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than June 25, 2003, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., June 23rd deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Mandatory Letters of Intent to propose.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Wednesday, July 2, 2003. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit mandatory letters of intent by the

June 23, 2003, deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - June 6, 2003, 10 a.m. CZT; All Mandatory Letters of Intent and Questions Due - June 23, 2003, 2 p.m. CZT; Official Responses to Questions Posted - June 25, 2003, or as soon thereafter as practical; Proposals Due - July 2, 2003, 2 p.m. CZT; Contract Execution - July 29, 2003, or as soon thereafter as practical; Commencement of Project Activities - August 4, 2003.

TRD-200303260
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: May 28, 2003

◆ ◆ ◆
Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on April 25, 2003, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: TOYLORIA O'JON- HOUSTON, TX; EMILY PARISH- ALVIN, TX; JOHN BOVERIE- BORGER, TX; and MARCELINE NOBLE- LOS ANGELES, CA.

Following the examination of applicants on April 25, 2003, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

ORAL STENOGRAPHY: CRYSTAL PAYNE- GRAND PRAIRIE, TX; ANNE MEDRANO- SAN ANTONIO, TX; SONIA ESCOCHEA-SCHERTZ, TX; and RICHARD BALLARD- FT. WORTH, TX.

TRD-200303197
Sheryl Jones
Director of Administration
Court Reporters Certification Board
Filed: May 23, 2003

◆ ◆ ◆
Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Young Brothers, Inc, Contractors, Docket No. 2001- 0484-MSW-E on May 16, 2003 assessing \$14,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512)239-1892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nutro Products Corporation, Docket No. 2000-1374- IHW-E on May 16, 2003 assessing \$143,000 in administrative penalties with \$142,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy Van Cleave, Enforcement Coordinator at (512)239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Everest Exploration, Incorporated, Docket No. 2001- 0828-UIC-E on May 16, 2003 assessing \$41,500 in administrative penalties with \$40,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Howletts Inc DbA Kwik Way Ii, Docket No. 2001-0452- PST-E on May 16, 2003 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512)239-1899, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding APM Enterprises, Inc. dba Al's Corner Store, Docket No. 2001-1483-PST-E on May 16, 2003 assessing \$4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy Van Cleave, Enforcement Coordinator at (512)239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Proton PRC Ltd., Docket No. 2002-0557-PST-E on May 16, 2003 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding, Enforcement Coordinator at (512)394-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hardin Independent School District, Docket No. 2002- 0493-MWD-E on May 16, 2003 assessing \$8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713)767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Faye Smien dba Linda's Quick Stop, Docket No. 2002- 0841-PST-E on May 16, 2003 assessing \$9,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy Van Cleave, Enforcement Coordinator at (512)239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magic Valley Roofing & Construction Company, Incorporated, Docket No. 2002-1058-MSW-E on May 16, 2003 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956)430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Petroleum Transports Inc., Docket No. 2002-0619-PST-E on May 16, 2003 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at (817)588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan J. Mendez dba Big John's Muffler Shop, Docket No. 2002-1107-AIR-E on May 16, 2003 assessing \$450 in administrative penalties with \$90 deferred.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Enforcement Coordinator at (817)588-5812, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Al-Kel Alliance, Incorporated, Docket No. 2002-0932-MLM-E on May 16, 2003 assessing \$10,925 in administrative penalties with \$2,185 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817)588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rolando Zamora dba D & D Waste Oil Services, Docket No. 2002-1132-MSW-E on May 16, 2003 assessing \$10,455 in administrative penalties with \$2,091 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956)430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & K Development Corporation, Docket No. 2002-0523-MWD-E on May 16, 2003 assessing \$18,150 in administrative penalties with \$17,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817)588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Faurie's Food and Fuel, Incorporated, Docket No. 2002-0195-PWS-E on May 16, 2003 assessing \$4,100 in administrative penalties with \$820 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512)239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises, L.L.C., Docket No. 2002-0892-AIR-E on May 16, 2003 assessing \$33,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409)899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sanger, Docket No. 2002-0705-MWD-E on May 16, 2003 assessing \$5,400 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Enforcement Coordinator at (817)588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pablo Rubio dba Rubio Bro's, Docket No. 2002-1019-MSW-E on May 16, 2003 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandra Alanis, Enforcement Coordinator at (956)430-6044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Morgan Oil Company, Docket No. 2002-0338-PST-E on May 16, 2003 assessing \$19,000 in administrative penalties with \$3,800 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409)899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pulak Barua dba Sunshine Food Mart, Docket No. 2002-0516-PST-E on May 16, 2003 assessing \$12,000 in administrative penalties with \$11,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Enforcement Coordinator at (817)588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pecan's Restaurant and Bar, Inc., Docket No. 2002-1081-PWS-E on May 16, 2003 assessing \$3,175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512)239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oak Ridge Water Supply Corporation, Docket No. 2002-0675-PWS-E on May 16, 2003 assessing \$1,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512)339-2929, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200303255

LaDonna Castañuela
Chief Clerk

Texas Commission on Environmental Quality

Filed: May 27, 2003



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance

with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 7, 2003**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 7, 2003**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: ABF, Inc. dba Clearwater Distribution; DOCKET NUMBER: 2002-0374-PWS-E; TCEQ ID NUMBER: 1020063; LOCATION: 4.7 miles east of the intersection of Farm-to-Market (FM) 449 and FM 450, Hallsville, Harrison County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(iv), and Texas Health and Safety Code (THSC), §341.0315, by failing to meet the minimum water system capacity requirements by not providing a pressure tank with a capacity of 20 gallons per connection; and 30 TAC §290.46, by failing to maintain proper maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: \$125; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 525-0380; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Calderon Enterprises, Inc.; DOCKET NUMBER: 2001-0336-PST-E; TCEQ ID NUMBER: 0015578; LOCATION: 4710 South Buckner, Dallas, Dallas County, Texas; TYPE OF FACILITY: store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(3) and THSC, §382.085(b), by failing to conduct testing of the full Stage II vapor recovery system every five years; 30 TAC §115.248(2) and THSC, §382.085(b), by failing to have a trained representative in the operation and maintenance of the Stage II vapor recovery system; and 30 TAC §334.21, by failing to pay the underground storage tank (UST) fees; PENALTY: \$4,000; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Don Scogin dba Scogin Service; DOCKET NUMBER: 1999-1162-PST-E; TCEQ ID NUMBER: 5061; LOCATION: 123 Ocean Boulevard, Los Fresnos, Cameron County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §334.21, by failing to pay outstanding UST fees; PENALTY: \$1,250; STAFF ATTORNEY: Bethany Badeaux, Litigation Division, MC 175, (512) 239-3426; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Insignia, Inc.; DOCKET NUMBER: 2002-0363-IHW-E; TCEQ ID NUMBER: 84329; LOCATION: 1933 Interstate

Highway 35 East, New Braunfels, Comal County, Texas; TYPE OF FACILITY: sign manufacturing; RULES VIOLATED: 30 TAC §335.69(h) and 40 Code of Federal Regulations (CFR) §262.34(f), by failing to maintain less than 6,000 kilograms of hazardous waste on-site and failing to comply with the 180-day accumulation time limit for a small quantity generator as required for operating a hazardous waste storage facility without a permit; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct hazardous waste determinations on the waste streams; 30 TAC §335.6(a) and (c), by failing to update the notice of registration with appropriate generator status and a list of all waste streams, waste management units, recycling activities, and waste streams of contaminated soil; 30 TAC §335.4, by failing to investigate and remediate unauthorized discharges; 30 TAC §335.9(a)(2), by failing to submit annual waste summaries; 30 TAC §335.69(f)(4)(A) and 40 CFR §262.34(d)(2), by failing to write accumulation start dates and label the words "hazardous waste" on containers of hazardous waste; and 30 TAC §335.69(f)(2) and 40 CFR §265.173(a), by failing to keep containers of hazardous waste closed; PENALTY: \$36,300; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Joe Ledbetter dba Joe's Auto Body; DOCKET NUMBER: 2002-0104-AIR-E; TCEQ ID NUMBER: DB-5047-J; LOCATION: 15293 Addison Road, Addison, Dallas County, Texas; TYPE OF FACILITY: auto body shop; RULES VIOLATED: 30 TAC §106.436(3) and THSC, §382.085(b), by failing to keep all liquid waste in covered containers prior to disposal; 30 TAC §106.436(7) and THSC, §382.085(b), by failing to have all paint booth, spray area, and preparation area overspray filters or filter system with a particulate control efficiency of at least 90%; 30 TAC §106.436(8) and THSC, §382.085(b), by failing to use high transfer efficiency coating application equipment; 30 TAC §106.436(9)(B) and THSC, §382.085(b), by failing to minimize clean up emissions by keeping all wash solvents stored in an enclosed reservoir that is covered at all times; 30 TAC §106.436(11)(B) and THSC, §382.085(b), by failing to have a stack 1.2 times the height of the body shop for the spray area, spray booth, and preparation area; 30 TAC §106.436(16) and THSC, §382.085(b), by failing to keep material safety data sheet records for a consecutive 24-month period and available for inspection upon request from commission personnel or any other air pollution control agency with jurisdiction; 30 TAC §115.422(1)(B) and THSC, §382.085(b), by failing to minimize volatile organic compound emissions during clean-up by utilizing an enclosed reservoir that is covered at all times; 30 TAC §115.422(2) and THSC, §382.085(b), by failing to use coating application equipment with a transfer efficiency of at least 65%; and 30 TAC §115.426(1) and THSC, §382.085(b), by failing to maintain and keep material safety data sheets which document the volatile organic compound content and other relevant information regarding the coating used in surface coating operations and the type of quantity used; PENALTY: \$13,125; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Rowntree Cattle Company, L.L.C.; DOCKET NUMBER: 2001-0821-AGR-E; TCEQ ID NUMBER: none; LOCATION: 233 Private Road 1479, Hico, Erath County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 TAC §321.31(a) and §321.39(f)(24)(D), and TWC, §26.121(a), by failing to prevent unauthorized discharges from the stock tank and from the waste storage pond; 30 TAC §321.31(a) and §321.39(f)(24)(D), and TWC, §26.121(a), by failing to prevent unauthorized discharges from the wastewater transfer pipe; 30 TAC §321.42(a), by failing to notify

the TCEQ in writing within 14 working days of the unauthorized discharges; and 30 TAC §321.40(11), by failing to properly dispose of dead animals to prevent contamination of waters in the state, creation of a nuisance, or a public health hazard; PENALTY: \$14,700; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200303249

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 27, 2003



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 7, 2003**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 7, 2003**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: A. D. Stenger dba Ridgewood Village Water System; DOCKET NUMBER: 2001-0138-PWS-E; TCEQ ID NUMBER: 2270015; LOCATION: Sugar Creek Drive, 100 feet north of Gentry Avenue, Austin, Travis County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement covering all property within 150 feet of the well; and 30 TAC §290.44(d)(5), by failing to provide sufficient valves on all dead-end mains so that flushing of the system can be accomplished as required; PENALTY: \$800; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Allen Watts dba Lago Vista Water Supply; DOCKET NUMBER: 2002-0848-PWS-E; TCEQ ID NUMBER: 0940029; LOCATION: Highway 80 South, two miles south of Luling, Guadalupe

County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c), by failing to collect and submit tap samples for lead/copper analysis; TCEQ Default Findings Order Docket Number 1998-1105-PWS-E, Ordering Provision 1, by failing to pay administrative penalties as required by the Commission Order; and 30 TAC §290.51, by failing to pay the public health service fees; PENALTY: \$5,156; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: BASF Corporation; DOCKET NUMBER: 2001-0008-AIR-E; TCEQ ID NUMBER: BL-0021-O; LOCATION: 602 Copper Road, Freeport, Brazoria County, Texas; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §101.6 and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit notifications of upsets; 30 TAC §116.115(b)(2)(G), TCEQ Air Quality Permit 1733A, and THSC, §382.085(b), by failing to comply with the permitted nitrogen oxide limits and exceeding the permitted hourly rates for nitrogen oxides, and 30 TAC §335.323, by failing to pay outstanding hazardous waste generation fees and non-hazardous waste generation fees; PENALTY: \$87,500; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Blue Dolphin Pipe Line Company; DOCKET NUMBER: 2002-1022-AIR-E; TCEQ ID NUMBER: BL-0421-R; LOCATION: 2834 East Highway 332, Freeport, Brazoria County, Texas; TYPE OF FACILITY: oil and gas production; RULES VIOLATED: 30 TAC §112.146(2), and THSC, §382.085(b), by failing to submit an annual compliance certification within 30 days after the end of the certification period; 30 TAC §112.145(2)(B), and THSC, §382.085(b), by failing to submit a deviation report within 30 days after the end of the deviation period; and 30 TAC §122.504(a)(4)(A) and THSC, §382.085(b), by failing to submit an application, as a result of the revision of the General Operating Permit Number O-00203 within 45 days after issuance; PENALTY: \$6,250; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Brant-Sta, Inc. dba Max-A-Mart; DOCKET NUMBER: 2001-1065-PST-E; TCEQ ID NUMBER: 60014; LOCATION: intersection of US Highway 69 and State Highway 19, Emory, Rains County, Texas; TYPE OF FACILITY: retail gasoline service station; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tank (UST) systems; PENALTY: \$6,750; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: The City of Longview; DOCKET NUMBER: 2000-0395-MWD-E; TCEQ ID NUMBER: 10589-002; LOCATION: approximately 2,500 feet west of the crossing of Grace Creek by Farm-to-Market Road (FM) 1845, approximately 4,000 feet south of the intersection of FM 1845 and 2087, Gregg County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121, TCEQ Water Quality Permit Number 10589-002, and Interim Effluent Limits and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and (9), §319.302(b)(3), and TCEQ Water Quality Permit Number 10589-002, Monitoring and Reporting Requirements, Non-compliance Notification Number 7.b., by failing to notify the TCEQ within 24 hours of becoming aware of a discharge of 100,000 gallons

or more of wastewater; and 30 TAC §305.125(1), TWC, §26.121, and TCEQ Water Quality Permit Number 10589-002, Permit Conditions Number 2.g., by failing to prevent unauthorized discharges from the lift station; PENALTY: \$65,000; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: Courtney & Company, Inc.; DOCKET NUMBER: 1999-1594-IHW-E; TCEQ ID NUMBER: 86220; LOCATION: 3828 Highway 1765, Texas City, Galveston County, Texas; TYPE OF FACILITY: industrial painting and sandblasting operation; RULES VIOLATED: 30 TAC §335.4 and TWC, §26.121, by causing, suffering, allowing and/or permitting the collection, handling, storage, processing, and/or disposal of industrial solid waste; PENALTY: \$15,000; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Dr. Pepper Bottling Company of Texas dba Big Red/Seven Up Bottling Company of South Texas; DOCKET NUMBER: 2001-1156-PST-E; TCEQ ID NUMBER: 47841; LOCATION: 3127 Cabaniss Parkway, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: wholesale beverage sales and delivery with a UST; RULES VIOLATED: 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to obtain a valid, current delivery certificate; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475, by failing to test a line leak detector at least once per year for performance and operational reliability; and 30 TAC §334.50(b)(2)(A) and TWC, §26.3475, by failing to monitor pressurized piping of the UST system in a manner designed to detect releases from any portion of the piping system; PENALTY: \$6,500; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: Lyondell-Citgo Refining, L.P.; DOCKET NUMBER: 2002-1040-AIR-E; TCEQ ID NUMBER: HG-0048-L; LOCATION: 12000 Lawndale Street, Houston, Harris County, Texas; TYPE OF FACILITY: petroleum refining; RULES VIOLATED: 30 TAC §101.20(1) and THSC, §382.085(b), by failing to monitor 368 valves listed in the benzene toluene unit as being a volatile organic compound service and listed on the difficult-to-monitor list; PENALTY: \$3,350; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Merit Energy Company; DOCKET NUMBER: 2001-0615-AIR-E; TCEQ ID NUMBER: HG-4368-I; LOCATION: 2414 West Mount Houston Road, Houston, Harris County, Texas; TYPE OF FACILITY: oil and gas production; RULES VIOLATED: 30 TAC §122.146(1) and (2), and THSC, §382.085(b), by failing to submit annual compliance certifications within 30 days after the end of the certification periods; and 30 TAC §122.145(2) and THSC, §382.085(b), by failing to submit deviation reports; PENALTY: \$5,625; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Miracles Never Cease, Inc.; DOCKET NUMBER: 2002-0625-AIR-E; TCEQ ID NUMBER: DB-1171-M; LOCATION:

2710 North Beltline, Irving, Dallas County, Texas; TYPE OF FACILITY: paint and autobody shop; RULES VIOLATED: 30 TAC §106.436(14), §115.421(a)(8)(B)(i) and (ix), and THSC, §382.085(b), by failing to meet the requirements of its permit by rule by exceeding the required volatile organic compound limits for primer and wipe-down solution; PENALTY: \$2,500; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: P.M. Fuel Service, Incorporated; DOCKET NUMBER: 2002-0709-PST-E; TCEQ ID NUMBER: none; LOCATION: 4503 Gus Thomasson, Mesquite, Dallas County, Texas; TYPE OF FACILITY: fuel distribution operation; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by depositing a regulated substance into a regulated UST system without first observing that the facility had a valid, current delivery certificate issued by the TCEQ covering that UST system; PENALTY: \$1,000; STAFF ATTORNEY: Robin Chapman, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Pilkington's Big Tex, Inc.; DOCKET NUMBER: 2002-0845-PST-E; TCEQ ID NUMBERS: 11564 and 46789; LOCATIONS: (Big Tex #1) 714 West Highway 190, Belton, Bell County; and (Big Tex #3) 1402 South Highway Boulevard, Belton, Bell County, Texas; TYPE OF FACILITIES: convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to the common carrier a valid, current delivery certificate issued by the agency before delivery of a regulated substance into each UST system; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit a UST registration and self-certification form in a timely manner; 30 TAC §334.8(c)(5)(C), by failing to tag, label, or mark all fill tubs for each regulated UST; and 30 TAC §334.10(b)(1)(B), by failing to make available the corrosion protection records requested for the UST system; PENALTY: \$600; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 525-0380; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Pilkington's Big Tex Oil Distributors, Inc.; DOCKET NUMBER: 2002-0641-PST-E; TCEQ ID NUMBER: WA00017; LOCATION: 1402 South Highway Boulevard, Belton, Texas; TYPE OF FACILITY: fuel distributing operation; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator of a regulated UST system has a valid, current delivery certificate issued by the agency prior to depositing any regulated substance into the UST system; PENALTY: \$600; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 525-0380; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Proton PRC, LTD.; DOCKET NUMBER: 2002-0057-PST-E; TCEQ ID NUMBER: none; LOCATION: 2222 West Main, Gun Barrel City, Henderson County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe a valid, current delivery certificate issued by the TCEQ prior to dispensing gasoline into the UST system; PENALTY: \$1,000; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: Saba Nassif dba OST Chevron; DOCKET NUMBER: 2001-1010-PST-E; TCEQ ID NUMBER: 0029293; LOCATION: 4303 Old Spanish Trail, Houston, Harris County, Texas; TYPE OF FACILITY: grocery store with retail sales of gasoline;

RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit a UST registration and a completed UST self-certification form; and 30 TAC §334.8(c)(5)(A)(I) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the UST system; PENALTY: \$3,500; STAFF ATTORNEY: Troy Nelson, Litigation Division, MC R-5, (903) 525-0380; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(17) COMPANY: Walter J. Carroll Water Company, Inc.; DOCKET NUMBER: 2001-1379-PWS- E; TCEQ ID NUMBERS: 0700057, 0700058, 0700063, 0700064, and 11543; LOCATIONS: (Emerald Forest) five miles west of Interstate 35 on FM 1446, Waxahachie, Ellis County; (Grande Casa) intersection of Old Maypearl Road and Grande Casa Street, Waxahachie, Ellis County; (Spanish Grant) 11.4 miles west of Interstate 35 on FM 1446, Waxahachie, Ellis County; and (Lakeview Ranchettes) west edge of Midlothian, .25 miles west of Highway 67 on Old Fort Worth Road, Waxahachie, Ellis County, Texas; TYPE OF FACILITIES: public water supply; RULES VIOLATED: 30 TAC §290.46(q), by failing to issue a boil water notice within 24 hours following low distribution pressures or water outages; 30 TAC §290.46(d)(2)(A), §290.110(b)(4) and (c)(5)(b), by failing to maintain a residual disinfectant of at least 0.2 milligrams per liter free chlorine in the far reaches of the distribution system and failing to monitor chlorine residuals in the distribution system at least once every seven days; 30 TAC §290.41(c)(3)(N), by failing to provide Well Number 2 with a flow measuring device to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(i), by failing to use chemicals which conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60 for direct additives and ANSI/NSF Standard 61 for indirect additives; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices which ensure the reliability of the systems' facilities and equipment and failing to repair the cracked sealing block at Well Number 1; 30 TAC §290.46(j), by failing to complete a customer service inspection (CSI) certificate prior to providing continuous water service to new construction or on any existing service when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after material improvement, correction, or addition to the private water distribution; 30 TAC §290.46(f)(3)(A)(iii), by failing to maintain records of the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation; 30 TAC §290.41(c)(3)(K), by failing to seal the well head with gasket or sealing compound to prevent the possibility of contaminating the well water; 30 TAC §290.41(c)(3)(O), by failing to protect completed well units by intruder resistant fences, the gates of which are provided with locks or enclosed in locked, ventilated well houses to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.46(v), by failing to install the electrical wiring for the wells in a securely mounted conduit in compliance with a local or national electrical code; 30 TAC §290.43(e), by failing to enclose the ground storage tank with a properly constructed intruder-resistant fence; 30 TAC §290.46(m)(1)(A), by failing to ensure the system's ground storage tank is inspected annually by water system personnel or a contracted inspection service; 30 TAC §290.46(f)(2), by failing to maintain records of annual ground storage tank inspections; 30 TAC §290.46(m)(1)(B), by failing to ensure the system's pressure tank is inspected annually by water system personnel or a contracted

inspection service; 30 TAC §290.46(f)(2), by failing to maintain records of annual pressure tank inspections; 30 TAC §290.43(c)(6), by failing to ensure that the ground storage tank was thoroughly tight against leakage; 30 TAC §290.43(c)(1), by failing to provide the ground storage tank vent with a 16 mesh or finer screen fabricated of corrosion resistant material; 30 TAC §290.46(n), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.90(a)(1) and (2), by failing to make all reasonable efforts to prevent interruptions of service and make reasonable provisions to meet emergencies resulting from failure of service; 30 TAC §290.44(c), by failing to provide properly sized water line throughout the distribution system; 30 TAC §290.43(c)(4), by failing to equip the ground storage tank with a water level indicator; 30 TAC §290.43(d)(3), by failing to provide the pressure tank with a device for determining the air-water-volume ratio; 30 TAC §290.44(h), by failing to install a backflow prevention assembly or have an adequate internal cross-connection control program where an actual or potential contamination hazard exists; and 30 TAC §290.43(c)(3), by failing to modify the overflow pipe flap valve assembly on the ground storage tank to provide no more than a 1/16-inch gap, in strict accordance with the American Water Works Association; PENALTY: \$5,500; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200303250

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 27, 2003



Notice of Water Rights Application

Notices mailed May 22, 2003 through May 23, 2003.

APPLICATION NO. 14-5434E; Lower Colorado River Authority (LCRA), P.O. Box 220, Austin, Texas 78767-0220, applicant, seeks an amendment to Certificate of Adjudication No. 14- 5434, as amended, pursuant to 11.122, Texas Water Code and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Certificate of Adjudication No. 14-5434, as amended, authorizes LCRA to maintain an overflow type structure and a reservoir on the Colorado River, Colorado River Basin, and temporarily impound therein not to exceed 86 acre-feet of water in Colorado County. Owner is also authorized to divert and use not to exceed 133,000 acre-feet of water per annum from a point on the Colorado river for municipal, industrial, and agricultural purposes in Colorado, Wharton, Travis, Bastrop, Fayette, and Matagorda Counties within the Colorado River Basin, Lavaca River Basin, Guadalupe River Basin, Colorado-Lavaca Coastal Basin, and Brazos-Colorado Coastal Basin at a maximum rate of 600.00 cfs (269,400 gpm). Applicant seeks to amend Certificate of Adjudication No. 14-5434, as amended, to add additional diversion points both upstream and downstream of the existing diversion point. Said additional points are currently authorized in other Certificates owned by LCRA. LCRA requests that the time priority remain November 1, 1900, at the additional diversion points. The additional diversion points are described as follows: (1) The diversion points (two) authorized in Certificate of Adjudication No. 14-5473: (A) At a point on the Colorado River in the Isaac Harris Grant, Abstract 38, Bastrop County, Texas. Located at 30.15240°N Latitude, 97.34650°W Longitude. (B) On the perimeter of Lake Bastrop on Spicey Creek, tributary of the Colorado River, in Bastrop County, Texas. Located at 30.15475 °N Latitude, 97.29339°W Longitude. (2) The diversion points (2)

authorized in Certificate of Adjudication No. 14- 5474: (A) At a point on the east bank of the Colorado River in the J. M. Hensley Survey, Abstract 54, Fayette County, Texas. Located at 29.86770°N Latitude, 96.77560°W Longitude. (B) On the perimeter of Cedar Creek Reservoir on Cedar Creek, tributary of the Colorado River Basin in the J. M. Hensley Survey, Abstract 54, Fayette County, Texas. Located at 29.91920°N Latitude, 96.75110°W Longitude. (3) The diversion points (three) authorized in Certificate of Adjudication No. 14-5476, as amended: (A) At a point on the east bank of a reservoir, known as Lane City Dam, on the Colorado River in the Sylvenus Castleman Grant, Abstract 11, Wharton County, Texas. Located at 29.1936°N Latitude, 96.07210°W Longitude. (B) At a point on the east bank of a reservoir, known as Bay City Dam, on the Colorado River in John F. Bowman and Henry Williams Grant, Abstract 9, Matagorda County, Texas. Located at 28.98400°N Latitude, 96.00020°W Longitude. (C) At a point on the west bank of a reservoir, known as Bay City Dam, on the Colorado River located in Thomas Cayce Grant, Abstract 14, Matagorda County, Texas. Located at 28.98060°N Latitude, 96.01150°W Longitude. (4) The diversion points (two) authorized in Certificate of Adjudication No. 14-5475, as amended: (A) At a point on the east bank of the Colorado River in the A.W. McLain and James McNair Grant, Abstract 33, Colorado County. Located at 29.56990°N Latitude, 96.40200°W Longitude. (B) At a point located on the perimeter of Eagle Lake on Moores Branch of the Colorado River in Colorado County, Texas. Located at 29.55830°N Latitude, 96.33410°W Longitude. (5) The diversion point authorized in Certificate of Adjudication No. 14-5477, as amended, which is at a point on the south bank of the Colorado River located in the Robert Kuykendall Grant, Abstract 39, Wharton County, Texas. Located at 29.30727°N Latitude, 96.13401°W Longitude. (6) The diversion point authorized in Certificate of Adjudication No.14-5437, which is at a point on the west bank of the Colorado River in the Cornelius H. Vanderveer Grant, Abstract 95, Matagorda County, Texas and also being 28.77580°N Latitude, 95.99700°W Longitude. Applicant also seeks to divert and use the water from anywhere on the perimeter of Town Lake, Lake Austin, and Lake Travis authorized by Certificates of Adjudication Nos. 14-5471, as amended, and 14-5482, as amended. Water diverted from these will not be diverted from storage in the reservoirs. Applicant is not requesting an increase in the maximum rate of diversion or the maximum annual quantity of water authorized in Certificate of Adjudication No. 14-5434, as amended. Pursuant to 30 TAC 297.45 granting an application for an amendment to a water right shall not cause an adverse impact to an existing water right. The application was received on August 29, 2002. Additional information for the application was received on November 7, 2002, December 18, 2002, and January 29, 2003. The application was accepted for filing and declared administratively complete on February 5, 2003. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by June 23, 2003.

APPLICATION NO. 5764; EBCO Land Development, Inc., P.O. Box 659, Rye, Texas 77369, applicant, seeks a Water Use Permit pursuant to 11.121 Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Notice of this application was issued on April 1, 2002 and the comment period ended on May 16, 2002. On April 15, 2003, the applicant amended its application to request conjunctive use of State water and groundwater to maintain an on-channel reservoir as described herein instead of the original request to use only groundwater to maintain the reservoir full. Pursuant to 30 TAC 281.23, a new notice is being issued due to the amendment to the application. Applicant now seeks authorization to construct and maintain an on-channel dam and reservoir on Fish Creek, a tributary of Lake Creek, a tributary of the San Jacinto River, San Jacinto River Basin for in-place recreational use. Station 9+15 on the centerline of the dam is

located at 30.30 N Latitude, 95.57 W Longitude, also bearing 30 degrees SE, 3,200 feet from the southeast corner of Richard Smith, Original Survey Abstract 491 approximately 8 miles southwest of Conroe, in Montgomery County, Texas. The reservoir will have a surface area of 88.4 acres and impound not to exceed 482 acre-feet of water. Applicant is requesting to use both state water and groundwater to maintain the reservoir at normal operating levels. Ownership of the land where the proposed reservoir will be located is evidence by Warranty Deed Document File No. 9569718 in the Official Records of Montgomery County. The application was received on February 5, 2001. Additional information was received on August 16, 2001 and February 19, 2002. The Executive Director reviewed the application and determined it to be administratively complete on February 19, 2002.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200303256

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 27, 2003



Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 7, 2003**. Section 7.075 also requires that the commission promptly consider any

written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 7, 2003**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: ASARCO Incorporated; DOCKET NUMBER: 2002-1396-UIC-E; IDENTIFIER: Underground Injection Control Permit Numbers WDW 129, WDW, 273, and WDW 324; LOCATION: Amarillo, Potter County, Texas; TYPE OF FACILITY: noncommercial hazardous Class I injection wells; RULE VIOLATED: 30 TAC §37.541(f) and THSC, §27.073, by failing to submit an alternate financial assurance for liability coverage; and 30 TAC §37.404 and THSC, §27.073, by failing to maintain a third party coverage for bodily injury and property damage; PENALTY: \$3,680; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: IDK, L.P. dba Carrizo Springs 66; DOCKET NUMBER: 2003-0096-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 05370; LOCATION: Carrizo Springs, Dimmit County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to submit an underground storage tank (UST) registration and self-certification form and failing to provide a copy of a valid, current delivery certificate; PENALTY: \$1,440; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of Cisco; DOCKET NUMBER: 2002-0668-MWD-E; IDENTIFIER: Water Quality Permit Number 10424-001; LOCATION: Cisco, Eastland County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and §305.126(a), and Water Quality Permit Number 10424-001, by failing to initiate engineering and financial planning for expansion and/or upgrade of the wastewater treatment plant; 30 TAC §305.125(1) and (5), Water Quality Permit Number 10424-001, and the Code, §26.121, by failing to meet permit effluent limits for biochemical oxygen demand (BOD), failing to provide an effluent flow measuring device, failing to prevent and mitigate the discharge of untreated wastewater from the bar screen area, failing to meet quality assurance requirements, failing to properly maintain the wastewater treatment plant by allowing cattle to graze inside the wastewater treatment plant area and allowing numerous trees to grow, and failing to record the monthly pH value; and 30 TAC §305.125(1) and §319.11(b), and Water Quality Permit Number 10424-001, by failing to meet the 15 minute hold time for dissolved oxygen measurements; PENALTY:

\$7,000; ENFORCEMENT COORDINATOR: Carolyn Easley, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2002-0467-AIR-E; IDENTIFIER: Air Account Number BL-0042-G; LOCATION: Sweeny, Brazoria County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.6(b)(5) (now 30 TAC §101.201), and §116.115(c), and THSC, §382.085(b), by failing to adequately complete the final report to the agency for an emission event; and 30 TAC §116.115(c), Air Permit Number 5682A and PSD-TX-103M2, and THSC, §382.085(b), by failing to meet permitted emissions limits; PENALTY: \$31,050; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Dynegy Midstream Services, Limited Partnership; DOCKET NUMBER: 2002- 1214-AIR-E; IDENTIFIER: Air Account Number CI-0022-A; LOCATION: Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: natural gas liquids fractionator; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit a Title V deviation report; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Frank Nguyen dba East Side Food & Beverage; DOCKET NUMBER: 2003- 0236-PST-E; IDENTIFIER: PST Facility Identification Number 0006652; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$840; ENFORCEMENT COORDINATOR: Brad Brock, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Eden; DOCKET NUMBER: 2002-1166-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10081-001; LOCATION: Eden, Concho County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (11), TPDES Permit Number 10081-001, and the Code, §26.121(a), by failing to comply with permitted limits for flow, total suspended solids (TSS), carbonaceous biochemical oxygen demand (CBOD), ammonia nitrogen, and dissolved oxygen (DO), failing to measure effluent flow; and failing to correctly report the facility's effluent parameters; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(8) COMPANY: El Paso Field Services, L.P.; DOCKET NUMBER: 2002-1385-AIR-E; IDENTIFIER: Air Account Number PE-0118-G; LOCATION: Coyoana, Pecos County, Texas; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a Title V compliance certification; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(9) COMPANY: Rogelio and Yvonne D. Lopez dba Express Tire; DOCKET NUMBER: 2002- 1187-MSW-E; IDENTIFIER: Tire Generator Identification Number 15276; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: tire sales and repair; RULE VIOLATED: 30 TAC §328.56(b), by failing to use a registered transporter to transport scrap tires off-site; 30 TAC §§328.56(c),

(d)(4), and (e), 328.58(a) and (f), and 330.5(a), by failing to properly manifest scrap tires, failing to monitor scrap or used tires for vectors and utilize appropriate vector controls, and failing to dispose of scrap tires at an authorized facility; PENALTY: \$600; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3883; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Charles Bender dba Golden Oaks Mobile Home Park; DOCKET NUMBER: 2002-1415-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1700710; LOCATION: Willis, Montgomery County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2) and (g), §290.122(c), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and failing to provide public notice of the sampling deficiencies; 30 TAC §290.42(e)(3), by failing to install mechanical disinfection equipment; 30 TAC §290.46(e)(3)(A), (n)(2), (t), and (v), and THSC, §341.033(a), by failing to operate the system under the direct supervision of a water works operator, failing to make an accurate and current map of the distribution system available, failing to post a legible system ownership sign at each of the production, treatment, and storage facilities, and failing to install all water system electrical wiring in a securely mounted conduit; 30 TAC §290.45(b)(1)(E)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.43(d)(2), by failing to provide the pressure tank with a pressure release device and an easily readable pressure gauge; 30 TAC §290.41(c)(3)(A), (B), (K), (N), and (O), by failing to submit well completion data before placing the well into service, failing to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor, failing to provide a well casing vent, failing to provide the well with a flow measuring device, and failing to provide a lock for the well house unit; 30 TAC §290.121(a), by failing to maintain a microbiological monitoring plan; and 30 TAC §290.39(h) and THSC, §341.035, by failing to receive written approval of plans and specifications; PENALTY: \$4,200; ENFORCEMENT COORDINATOR: Kimberly McGuire, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Harris County Water Control and Improvement District Number 74; DOCKET NUMBER: 2003-0107-MWD-E; IDENTIFIER: TPDES Permit Number 10679-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10679-001, and the Code, §26.121(a), by failing to comply with the permit limitations for ammonia nitrogen and CBOD; PENALTY: \$3,510; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Conrad G. Walton dba Holiday Oaks Water System; DOCKET NUMBER: 2002-0209-PWS-E; IDENTIFIER: PWS Number 2390019; LOCATION: near Somerville, Washington County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and THSC, §341.0315(c), by failing to provide adequate well capacity; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary easement; and 30 TAC §290.43(d)(3), by failing to maintain an air-water-volume indication device.; PENALTY: \$250; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Kinder Morgan Liquids Terminals LLC; DOCKET NUMBER: 2003-0343- AIR-E; IDENTIFIER: Air Account Number HG-0261-J; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: bulk petroleum storage; RULE VIOLATED: 30 TAC

§122.145(2)(C) and THSC, §382.085(b), by failing to submit a Title V deviation report; PENALTY: \$2,040; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: FNR Foodmart Inc. dba Korner Food Mart; DOCKET NUMBER: 2003- 0390-PST-E; IDENTIFIER: PST Facility Identification Number 0005512; LOCATION: Richmond, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Brad Brock, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: City of Manor; DOCKET NUMBER: 2003-0361-MWD-E; IDENTIFIER: TPDES Permit Number 11003-001; LOCATION: Manor, Travis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11003-001, and the Code, §26.121(a), by failing to comply with permit limitations for DO, TSS, and BOD; PENALTY: \$920; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(16) COMPANY: Manti Operating Company; DOCKET NUMBER: 2003-0376-AIR-E; IDENTIFIER: Air Account Number PE-0020-B; LOCATION: Fort Stockton, Pecos County, Texas; TYPE OF FACILITY: natural gas compression; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a Title V compliance certification; PENALTY: \$2,375; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(17) COMPANY: McCloskey & Sons, L.L.C. dba Goodmans Shell; DOCKET NUMBER: 2002-1407-PST-E; IDENTIFIER: PST Facility Identification Number 0058331; LOCATION: Longview, Gregg County, Texas; TYPE OF FACILITY: gasoline retail and bulk station; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to provide proper release detection for the UST system; and 30 TAC §334.48(c), §334.50(d)(1)(B)(ii) and (iii)(I), by failing to conduct effective inventory control procedures; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(18) COMPANY: Sun Coast Resources, Incorporated; DOCKET NUMBER: 2002-1162-PST-E; IDENTIFIER: Regulated Entity Number 100529452; LOCATION: Hurst, Tarrant County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$800; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Sunwell Corporation dba Redifuel; DOCKET NUMBER: 2003-0094-PST-E; IDENTIFIER: Regulated Entity Number 102923562; LOCATION: Carrizo Springs, Dimmit County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$720; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Gerald Yates; DOCKET NUMBER: 2003-0068-OSS-E; IDENTIFIER: On- Site Sewage Facility (OSSF) Permit Number 101135; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.7(c)(2) and OSSF Permit Number 101135, by failing to have a new maintenance contract signed and submitted; PENALTY: \$238; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200303243

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 27, 2003



Texas Health and Human Services Commission

Correction of Error

The Texas Health and Human Services Commission proposed to repeal and adopt a new 1 TAC §355.501, concerning reimbursement methodology. The proposed rule notice was published in the May 30, 2003, issue of the *Texas Register* (28 TexReg 4210).

There is an error in the statement of fiscal implications. On page 4210, the third paragraph in the preamble should read as follows.

"The effect on state government for the first five-year period the section is in effect is an estimated *cost savings* of \$1,256 in fiscal year (FY) 2003; \$67,818 in FY 2004; \$124,463 in FY 2005; \$129,917 in FY 2006; and \$130,002 in FY 2007."

TRD-200303280



Texas Department of Housing and Community Affairs

Notice of Public Hearings--Community Services Block Grant and Community Food and Nutrition Program

The Community Services Block Grant Act (42 U.S.C. §9901 et seq.) and Texas Government Code, Sections 2306.092(11), 2105.053 and 2105.054, require public hearings on the intended use of federal block grant funds awarded within the State of Texas. The Texas Department of Housing and Community Affairs (TDHCA) participated in several hearings in the fall of 2002 and will conduct a final public hearing as part of the public information consultation and public hearing requirements for Community Services Block Grant (CSBG), a federal block grant. The primary purpose of this hearing is to solicit public comment on proposed policies, method of distribution, and use of program funds to operate the Community Services Block Grant (CSBG) and Community Food and Nutrition Program (CFNP) programs in Federal fiscal year (FFY) 2004 and 2005, should these funds become available.

The public hearing will be held in Austin at the Red Lion Hotel, 6121 North IH 35 at Highway 290 on Tuesday, June 24, 2003 at 5:30 p.m. A TDHCA representative will be present at the hearing to explain the planning process and to receive written and/or oral testimony from interested citizens and groups affected by CSBG and CFNP.

A copy of the Intended Use Report has been provided to all current CSBG and CFNP contractors. Other interested parties may download the report from the Department's website: www.tdhca.state.tx.us or may submit a written request for a copy of the report from the Texas Department of Housing and Community Affairs, Community Affairs Division, P.O. Box 13941, Austin, Texas 78711-3941.

Comments on the intended use of CSBG and CFNP funds may be in the form of oral or written testimony at the public hearings, written testimony submitted to the address provided above, or via e-mail to dlang@tdhca.state.tx.us. TDHCA must receive all testimony by July 18, 2003.

Questions regarding the report may be directed to Dyna C. Lang, 512-475-3905, or in writing using any of the methods of contact listed in this notice. Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled meeting.

Departamento de Viviendas y Asuntos Comunitarios de Texas
Sección de Servicios Comunitarios
Audiencias Públicas
El Programa Federal de Servicios Comunitarios (CSBG) y el Programa de
Alimento y Nutrición de la Comunidad (CFNP)

El Programa Federal de Servicios Comunitarios (CSBG) Acto (42 U.S.C.9901 et seq.) y el Código del Gobierno de Texas, Secciones 2306.092(11), 2105.053 y 2105.54, requieren audiencias públicas sobre el uso previsto del subsidio de fondos federales otorgados para el Estado de Texas. El Departamento de Viviendas y Asuntos Comunitarios de Texas (TDHCA) durante el otoño del año 2002, participó en varias audiencias públicas y llevará acabo la última audiencia pública para solicitar comentario público sobre el Programa Federal de Servicios Comunitarios. El propósito principal de esta audiencia es para solicitar el comentario público sobre las normas propuestas, métodos de distribución y el uso de los fondos federales para los años fiscales federales (FFY) 2004-2005 para la administración del Programa Federal de Servicios Comunitarios y del Programa de Alimento y Nutrición de la Comunidad, cuando dichos fondos sean disponibles.

La audiencia pública se llevará a cabo el martes, 24 de junio del 2003, en el Hotel Red Lion, 6121 N. IH-35 y Hwy 290 en Austin: Un representante de TDHCA estará presente en esta audiencia para explicar el proceso de planificación del programa y para recibir testimonio oral ó escrito de individuos y grupos interesados en los planes propuestos de CSBG y CFNP.

Copia del Informe Previsto del Uso de Fondos fue distribuida a todos los contratistas actuales de CSBG y CFNP. Otros grupos interesados pueden solicitar copia del informe a través de nuestra red de comunicaciones: www.tdhca.state.tx.us ó por escrito al Departamento de Viviendas y Asuntos Comunitarios de Texas, División de Asuntos Comunitarios, P.O. Box 13941, Austin, Texas 78711-3941.

Comentarios sobre el uso previsto de fondos de CSBG y CFNP pueden ser presentados en forma de testimonio oral ó escrito en la audiencia pública. Testimonios escritos pueden someterse a TDHCA usando la dirección postal mencionada anteriormente ó a través de correo electrónico a aalmague@tdhca.state.tx.us. El último día que se aceptaran testimonios en TDHCA es el 18 de julio 2003.

Preguntas con respecto a este informe pueden ser dirigidas a Al Almaguer, (512) 475-3908, o por escrito usando cualquier de los métodos de comunicación mencionados en este aviso. Individuos que requieren ayuda o servicios auxiliares para esta reunión deben comunicarse con Gina Esteves al (512) 475-3943 o Relay Texas al número 1-800-735-2989 por lo menos 2 días antes de esta audiencia.

TRD-200303259
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 27, 2003

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by UNDERWRITERS INDEMNITY COMPANY, Houston, Texas, a domestic fire and/or casualty company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200303180
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 21, 2003



Company Licensing

Application for admission to the State of Texas by CEM INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Buffalo Grove, Illinois.

Application for admission to the State of Texas by AMFIRST INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Oklahoma City, Oklahoma.

Application for incorporation to the State of Texas by U.S. AUTO INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200303281
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 28, 2003



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Ingenium Benefits, Inc., a foreign third party administrator. The home office is Omaha, Nebraska.

Application to change the name of Gallagher Braniff, Inc. to Arthur J. Gallagher of Texas, Inc., a domestic third party administrator. The home office is Houston, Texas.

Application to change the name of USI Administrators, Inc. to CBCA Administrators, Inc., a foreign third party administrator. The home office is Wilmington, Delaware.

Application to change the name of Texas Benefit Planning, Inc., to The Pension Company, a domestic third party administrator. The home office is Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200303177
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: May 21, 2003



Texas Lottery Commission

Instant Game Number 383 "Crossword"

This game procedure is amended to reflect changes to the number of tickets in the game, the number of prizes available for each prize level, and the odds of winning for each prize level. This amended game procedure supersedes the game procedure for this game that was published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3143).

1.0 Name and Style of Game.

A. The name of Instant Game No. 383 is "CROSSWORD". The play style is "extended play puzzle".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 383 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 383.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 383 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 383 - 1.2E

CODE	PRIZE
THR	\$3.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four

(4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$100 or \$500.

I. High-Tier Prize- A prize of \$5,000 or \$35,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (383), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 383-0000001-000.

L. Pack - A pack of "CROSSWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be two (2) fanfold configurations for this game. Configuration A will show the front of ticket 000 and the back of ticket 124. Configuration B will show the back of ticket 000 and the front of ticket 124.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CROSSWORD" Instant Game No. 383 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CROSSWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 139 (one hundred thirty-nine) play symbols. The player must scratch off all 18 (eighteen) boxed squares in the YOUR LETTERS to reveal 18 letters. For each of the 18 letters revealed in YOUR LETTERS, the player must scratch the same letter each time it is found in the CROSSWORD. For example, if the letter E is revealed in your letters, the player must scratch all E's in the CROSSWORD. There are three (3) small letters above and beside the your letters that appear under the latex on the ticket. These are smaller in size than your letters and are not your letters to be used in playing the game. If the player has scratched three (3) or more complete words in the crossword, the player will win the corresponding prize found in the prize legend on the back of the ticket. Only one prize can be claimed per ticket. The player must then scratch the corresponding letters found in the CROSSWORD puzzle. A "word" must contain at least three letters. A "word" cannot be formed by linking letters diagonally or by reading the letters from the bottom to top. Letters combined to form a complete "word" must appear in an unbroken horizontal or vertical string of letters in the CROSSWORD. An unbroken string of letters cannot be interrupted by a block space. Words within words are not eligible for a prize. Every single letter in the unbroken string must: (a) be revealed in YOUR LETTERS, and (b) be included to form a "word". The possible complete words for this ticket are shown on the CROSSWORD panel. Each possible complete word consists of three (3) or more letters and occupies an entire word space. Players must match all of the letters in a possible complete word in order to complete the word. If the letters revealed form three (3) or more complete words on the CROSSWORD panel each of which occupy a complete word space, the player will win the prize shown in the prize legend for forming that number of words. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. One hundred thirty-nine (139) possible Play Symbols must appear under the latex overprint on the front portion of the ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have 139 (one hundred thirty-nine) possible Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 139 (one hundred thirty-nine) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
 17. Each of the 139 (one hundred thirty-nine) possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket can only win once.

B. Adjacent tickets in a pack will not have identical patterns.

C. Each ticket consists of a Your Letters area and one crossword puzzle grid.

D. The crossword puzzle grid will be formatted with at least 109,000 configurations (i.e. puzzle layouts not including words).

E. All crossword puzzle grid configurations will be formatted within a grid that contains 11 spaces (height) by 11 spaces (width).

F. Each word will appear only once per ticket on the crossword puzzle grid.

G. Each letter will only appear once per ticket in the Your Letters play area.

H. Each Crossword Puzzle Grid will contain 19 (nineteen) words per puzzle per ticket made up of the following: a) 4 sets of 3-letter words; b) 5 sets of 4-letter words; c) 3 sets of 5-letter words; d) 3 sets of 6-letter words; e) 1 set of 7-letter words; f) 2 sets of 8-letter words; g) 1 set of 9-letter words.

I. There will be a minimum of three (3) vowels in the Your Letters play area.

J. The length of words found in the crossword puzzle grid will range from 3-9 letters.

K. Only words from the approved word list will appear in the crossword puzzle grid.

L. You will never find a word horizontally (in either direction), vertically (in either direction), or diagonally (in either direction) in the Your Letters play area that matches a word in the crossword puzzle grid.

M. Each crossword puzzle grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted crossword puzzles (i.e. the same grid), all "approved words" will appear in every logical (i.e. 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e. will not place the word "ZOO" in a position that causes an intersecting word to require the second letter to be "Z", when in fact, there are no approved words with a "Z" in the second letter position).

N. No one (1) letter, with the exception of vowels, will appear more than nine (9) times in the crossword puzzle grid.

O. No ticket will match eleven (11) words or more.

P. Three (3) to ten (10) completed words will be revealed as per the prize structure on winning tickets.

Q. All non-winning tickets will contain a) one (1) completed word approximately 20% of the time; b) and two (2) completed words approximately 80% of the time.

R. Sixteen (16) to eighteen (18) Your Letters will open at least one (1) letter in the crossword puzzle grid.

2.3 Procedure for Claiming Prizes.

A. To claim a "CROSSWORD" Instant Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CROSSWORD" Instant Game prize of \$5,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CROSSWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CROSSWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "CROSSWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,944,000 tickets in the Instant Game No. 383. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 383 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$3	939,412	6.33
\$5	748,982	7.94
\$10	142,553	41.70
\$20	59,443	99.99
\$100	9,679	614.11
\$500	1,973	3,012.67
\$5,000	30	198,133.33
\$35,000	8	743,000.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.13. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 383 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 383, the State Lottery Act (Texas Government Code,

Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

The following is a list of words approved by the Texas Lottery Commission for use in this game.

ACE	CAR	GUT	MAT	POP	TIE
ACT	CAT	GUY	MAY	PRO	TIP
ADD	COB	HAM	MET	PRY	TOE
ADO	COW	HAT	MID	PUT	TON
AFT	COY	HAY	MIX	RAG	TOO
AGE	CRY	HEM	MOB	RAM	TOP
AGO	CUB	HEN	MOO	RAN	TOT
AHA	CUE	HER	MOP	RAP	TOW
AID	CUP	HIM	MUD	RAT	TOY
AIM	CUT	HIP	MUG	RAW	TRY
AIR	DAB	HIS	NAB	RAY	TUB
ALL	DAY	HIT	NAP	RED	TUG
ALP	DEN	HOE	NET	RIB	TWO
AMP	DEW	HOG	NEW	RIG	URN
AND	DIG	HOP	NIL	RIM	USE
ANT	DIM	HOT	NOD	RIP	VAN
ANY	DIP	HOW	NOR	ROT	VAT
APE	DOG	HUB	NOT	ROW	VET
APT	DOT	HUE	NOW	RUB	VIA
ARC	DRY	HUG	NUT	RUG	WAG
ARM	DUB	HUM	OAF	RUN	WAX
ART	DUO	HUT	OAK	RUT	WAY
ASH	DYE	ICE	OAR	RYE	WEB
ASK	EAR	INK	OAT	SAW	WET
AWE	EAT	INN	ODD	SAY	WHO
AYE	EBB	IVY	OFF	SEA	WHY
BAD	EGG	JAB	OIL	SEE	WIG
BAH	EGO	JAR	OLD	SET	WIT
BAN	ELK	JAW	ONE	SEW	YAK
BAR	END	JAY	OPT	SHY	YEN
BAT	ERA	JIG	ORE	SIP	YES
BAY	EYE	JOB	OUR	SIR	YET
BED	FAN	JOG	OUT	SIT	YOU
BEE	FAR	JOY	OWE	SIX	ZAP
BEG	FEE	JUG	OWL	SKI	ZIP
BET	FEW	KEY	OWN	SLY	ZOO
BID	FEZ	KID	PAN	SON	ABLE
BIG	FIR	KIN	PAR	SOW	ACHE
BIN	FIT	KIT	PAW	SPA	ACID
BIT	FIX	LAB	PAY	SPY	ACRE
BOA	FOE	LAD	PEA	SUB	AFAR
BOG	FOG	LAG	PEG	SUM	AHOY
BOW	FOR	LAP	PEN	SUN	AIDE
BOY	FOX	LAW	PEP	TAB	AJAR
BUD	FRY	LEE	PET	TAG	AKIN
BUG	FUN	LEG	PIE	TAN	ALAS
BUS	FUR	LET	PIG	TAP	ALLY
BUY	GAG	LOW	PIN	TAR	ALOE
CAB	GAP	MAD	PIT	TEA	ALSO
CAN	GEM	MAN	PLY	TEE	ALTO
CAP	GET	MAP	POD	TEN	AMID

ANEW	BLOT	CITY	DECK	FACT	GEAR
ANTE	BLUE	CLAM	DEED	FADE	GIFT
ANTI	BLUR	CLAW	DEEM	FAIL	GIRL
AQUA	BOAT	CLAY	DEEP	FAIR	GIVE
ARCH	BODY	CLIP	DEER	FALL	GLAD
AREA	BOIL	CLUB	DENT	FAME	GLEE
ARID	BOLD	CLUE	DESK	FARE	GLOW
ATOM	BOLT	COAL	DIAL	FARM	GLUE
AUNT	BOND	COAT	DICE	FAST	GLUT
AURA	BOOK	COAX	DILL	FAWN	GNAT
AUTO	BOOT	CODE	DIME	FEAR	GOAL
AVID	BOSS	COIL	DIRE	FEED	GOAT
AWAY	BOTH	COIN	DIRT	FEEL	GOLF
AXIS	BOUT	COLD	DISH	FEET	GONE
AXLE	BOWL	COLT	DISK	FILE	GOOD
BABY	BRAG	COMB	DIVE	FILL	GOWN
BACK	BRAN	CONE	DOCK	FILM	GRAB
BAIL	BRIM	COOK	DOLL	FINE	GRAY
BAIT	BROW	COOL	DOME	FIRE	GREY
BAKE	BUCK	COPE	DONE	FISH	GRID
BALD	BULB	COPY	DOOR	FLAG	GRIN
BALK	BULK	CORD	DOVE	FLAP	GRIP
BALL	BULL	CORE	DOWN	FLAT	GROW
BAND	BUMP	CORK	DRAW	FLAW	GULF
BANK	BUNK	CORN	DROP	FLEA	GULL
BARE	BUNT	COST	DRUM	FLEE	GULP
BARK	BUOY	COVE	DUAL	FLEW	GUST
BARN	BURY	COZY	DUCK	FLIP	HAIL
BASE	BUSH	CREW	DUCT	FLOW	HAIR
BASH	BUSY	CRIB	DUEL	FOAM	HALF
BASS	CAGE	CROP	DUET	FOLD	HALL
BATH	CAKE	CROW	DULL	FOND	HALT
BEAD	CALF	CUBE	DUNE	FOOD	HAND
BEAK	CALL	CUFF	DUSK	FOOT	HARD
BEAM	CALM	CURB	DUST	FORK	HARE
BEAN	CAMP	CURE	DUTY	FORM	HARK
BEAR	CANE	CURL	EACH	FORT	HARP
BEAU	CAPE	CUTE	EARL	FOUR	HATS
BEEF	CARD	CYAN	EARN	FREE	HAUL
BEEP	CARE	DALE	EAST	FROG	HAVE
BEET	CARS	DAMP	EASY	FROM	HAWK
BELL	CART	DARE	ECHO	FUEL	HAYS
BELT	CASE	DARK	EDGE	FULL	HAZE
BEND	CAST	DART	EDIT	FUND	HAZY
BENT	CAVE	DASH	ELSE	FUSE	HEAL
BEST	CELL	DATA	EPIC	FUSS	HEAR
BIAS	CHAT	DATE	ETCH	GAIN	HEAT
BIKE	CHEF	DAWN	EVEN	GALA	HEEL
BILL	CHIN	DAZE	EXAM	GAME	HEIR
BIND	CHIP	DEAL	EXIT	GATE	HELD
BIRD	CITE	DEAN	FACE	GAZE	HELP

HERB	JUNE	LIST	MOCK	OXEN	QUIZ
HERD	JUNK	LIVE	MODE	PACE	RACE
HERE	JURY	LOAD	MOLD	PACK	RACK
HERO	JUST	LOAF	MOOD	FACT	RAFT
HIDE	KEEN	LOAN	MOON	PAGE	RAGE
HIGH	KEEP	LOCK	MORE	PAID	RAID
HIKE	KEYS	LOFT	MOSS	PALE	RAIL
HILL	KICK	LONG	MOST	PALM	RAIN
HINT	KIND	LOOK	MOTH	PARK	RAKE
HIRE	KING	LOOP	MOVE	PART	RAMP
HIVE	KITE	LOUD	MUCH	PASS	RARE
HOAX	KNEE	LOVE	MULE	PAST	RATE
HOLD	KNIT	LUCK	MUST	PATH	READ
HOLE	KNOT	LULL	MYTH	PAVE	REAL
HOME	KNOW	LURE	NAIL	PAWN	REAR
HOOD	LACE	LURK	NAME	PEAK	REED
HOOK	LACK	LUTE	NARY	PEAL	REEF
HOOP	LADY	LYNX	NEAR	PEAR	REEL
HOPE	LAIR	MADE	NEAT	PEER	RELY
HOSE	LAKE	MAIL	NEED	PICK	RENT
HOST	LAMB	MAIN	NEON	PIER	REST
HOUR	LAMP	MAKE	NEST	PILE	RICE
HOWL	LAND	MALL	NEXT	PINE	RICH
HUGE	LANE	MALT	NICE	PINK	RIDE
HULA	LARD	MANY	NICK	PINT	RING
HULL	LARK	MARK	NINE	PIPE	RINK
HUNT	LASH	MARS	NODE	PITA	RIPE
HUSH	LAST	MASK	NONE	PITY	RISE
HYPE	LATE	MAST	NOOK	PLAN	RISK
ICON	LAVA	MATH	NOON	PLAY	ROAD
IDEA	LAWN	MAZE	NORM	PLEA	ROAM
IDLE	LAZY	MEAL	NOSE	PLOT	ROAR
INCH	LEAD	MEET	NOTE	PLOW	ROBE
INTO	LEAF	MELT	NOUN	PLUM	ROCK
IOTA	LEAK	MEMO	NUMB	PLUS	ROLE
IRIS	LEAN	MEND	OATH	POEM	ROLL
IRON	LEAP	MENU	OBEY	POLL	ROOF
ITCH	LEFT	MESH	OBOE	POND	ROOM
ITEM	LEND	MESS	OKAY	PONY	ROOT
JACK	LESS	MICE	ONCE	POOL	ROPE
JADE	LEVY	MILD	ONLY	POSE	ROSE
JAZZ	LIFE	MILE	ONTO	POSH	RUBY
JEEP	LIFT	MILK	ONUS	POST	RUDE
JEST	LIKE	MILL	ONYX	POUR	RUIN
JIVE	LILY	MIND	OOZE	PULL	RULE
JOIN	LIMB	MINE	OPEN	PURE	RUNG
JOKE	LIME	MINK	OPUS	PURR	RUSH
JOLT	LINE	MINT	OUCH	PUSH	RUST
JUDO	LINK	MISS	OVAL	PUTT	SACK
JULY	LINT	MIST	OVEN	QUIP	SAGE
JUMP	LION	MOAT	OVER	QUIT	SAKE

SALE	SOCK	TENT	VARY	WOOL	ALERT
SALT	SODA	TERM	VASE	WORD	ALIAS
SAME	SOFA	TEST	VAST	WORK	ALIBI
SAND	SOFT	TEXT	VEAL	WORM	ALIEN
SAVE	SOIL	THAT	VENT	WORN	ALIGN
SCAN	SOLD	THAW	VERB	WRAP	ALIKE
SCAR	SOLE	THEN	VERY	WREN	ALIVE
SEAL	SOLO	THEY	VEST	YARD	ALLEY
SEAM	SOME	THIN	VETO	YARN	ALLOT
SEAT	SONG	THUS	VIEW	YAWN	ALLOW
SEED	SOON	TIDE	VINE	YEAR	ALLOY
SEEK	SORE	TIDY	VISA	YELL	ALOHA
SEEM	SORT	TIER	VOLT	YOGA	ALONE
SELF	SOUL	TILE	VOTE	YOLK	ALONG
SELL	SOUP	TILT	WADE	YORE	ALOOF
SEMI	SOUR	TIME	WAGE	YOUR	ALPHA
SEND	SPAN	TINT	WAIT	ZEAL	ALTER
SENT	SPIN	TINY	WAKE	ZERO	AMASS
SHED	SPOT	TIRE	WALK	ZEST	AMAZE
SHIN	STAR	TOAD	WALL	ZINC	AMBER
SHIP	STAY	TOIL	WAND	ZONE	AMIGO
SHOE	STEM	TOLD	WANT	ZOOM	AMINO
SHOP	STEP	TOLL	WARD	ABATE	AMISS
SHOW	STEW	TONE	WARM	ABIDE	AMONG
SHUT	STIR	TOOL	WARN	ABODE	AMPLE
SICK	STOP	TOSS	WARY	ABOUT	AMUSE
SIDE	SUCH	TOUR	WASH	ABOVE	ANGER
SIFT	SUIT	TOWN	WATT	ABYSS	ANGLE
SIGN	SURE	TRAP	WAVE	ACORN	ANGST
SILK	SURF	TRAY	WEAK	ACTOR	ANKLE
SILO	SWAN	TREE	WEAR	ACUTE	ANNEX
SING	SWAT	TRIM	WEEK	ADAGE	ANNOY
SINK	SWIM	TRIO	WEEP	ADAPT	ANTIC
SIZE	TACK	TRIP	WELD	ADEPT	ANVIL
SKEW	TACT	TROT	WELL	ADIEU	APART
SKIM	TAIL	TRUE	WEST	ADIOS	APPLE
SKIN	TAKE	TUBE	WHAT	ADMIT	APPLY
SKIP	TALE	TUCK	WHEN	ADOPT	APRON
SKIS	TALK	TUNA	WHIM	ADORE	ARENA
SLAP	TALL	TUNE	WIDE	ADULT	ARGUE
SLED	TAME	TURF	WIFE	AFFIX	ARISE
SLIM	TANK	TURN	WILD	AFTER	ARMOR
SLIP	TAPE	TUSK	WIND	AGAIN	AROMA
SLOW	TASK	TWIG	WING	AGENT	ARRAY
SMOG	TAXI	TWIN	WIPE	AGILE	ARROW
SNAP	TEAK	TYPE	WIRE	AGONY	ASCOT
SNOW	TEAM	UNDO	WISE	AGREE	ASHES
SNUG	TEAR	UNIT	WISH	AHEAD	ASIDE
SOAK	TEEN	URGE	WITH	AISLE	ASPEN
SOAP	TELL	USED	WOLF	ALARM	ASSET
SOAR	TEND	VAIL	WOOD	ALBUM	ATLAS

ATOLL	BLIND	CARRY	CONGA	EARLY	FORCE
ATTIC	BLINK	CARVE	CORAL	EARTH	FOUND
AUDIO	BLITZ	CATCH	COUCH	EIGHT	FRAIL
AUDIT	BLOCK	CAUSE	COUNT	ELBOW	FRAME
AVAIL	BLOOM	CEASE	COURT	EMCEE	FRANK
AVERT	BLUFF	CEDAR	COVER	EMPTY	FRESH
AVOID	BLUNT	CELLO	CRAFT	ENACT	FRONT
AWAIT	BLUSH	CHAIN	CRANE	ENJOY	FROST
AWAKE	BOARD	CHAIR	CRATE	ENTER	FROWN
AWARD	BOAST	CHALK	CRAVE	ENTRY	FRUIT
AWARE	BONUS	CHAOS	CRAWL	ENVOY	FUNNY
AWASH	BOOST	CHARM	CREEK	EQUAL	GAMES
AWFUL	BOOTH	CHART	CREST	ERASE	GIANT
AWOKE	BOUND	CHASE	CRISP	ERODE	GIVEN
AXIOM	BRACE	CHEAP	CROWD	ERROR	GLARE
AZURE	BRAID	CHECK	CROWN	ESSAY	GLASS
BACON	BRAIN	CHEER	CRUSH	EVADE	GLAZE
BADGE	BRAKE	CHESS	CRUST	EVENT	GLITZ
BAGEL	BRAND	CHIEF	CURVE	EVERY	GLOBE
BAKER	BRASS	CHILD	CYCLE	EXACT	GLOOM
BANJO	BRAVE	CHILI	DAILY	EXIST	GLORY
BARGE	BRAVO	CHILL	DAIRY	EXTRA	GLOSS
BARON	BRAWN	CHIME	DAISY	FABLE	GLOVE
BASIC	BREAD	CHIRP	DANCE	FACET	GOING
BASIL	BREAK	CHORD	DEBIT	FAINT	GOOSE
BASIN	BREED	CHORE	DECAL	FAULT	GORGE
BASIS	BRIAR	CHUTE	DECOY	FAUNA	GRACE
BATCH	BRICK	CIDER	DELAY	FEAST	GRADE
BATON	BRIEF	CIVIC	DELTA	FEIGN	GRAIN
BAYOU	BRING	CIVIL	DENIM	FEMUR	GRAND
BEACH	BROOK	CLAIM	DEPOT	FENCE	GRANT
BEARD	BROOM	CLASH	DEPTH	FETCH	GRAPE
BEECH	BROWN	CLASS	DEUCE	FEVER	GRAPH
BEGIN	BRUSH	CLEAN	DIARY	FIELD	GRASP
BEIGE	BUDDY	CLEAR	DIGIT	FINAL	GRASS
BEING	BUDGE	CLERK	DINER	FLAGS	GRAVY
BELOW	BUGLE	CLICK	DISCO	FLAIR	GREAT
BENCH	BUILD	CLIFF	DITCH	FLAKE	GREEN
BERET	BUILT	CLIMB	DODGE	FLAME	GREET
BERRY	BUNCH	CLOAK	DOUBT	FLARE	GRILL
BIRCH	BURST	CLOCK	DOUGH	FLASH	GRINS
BIRDS	CABIN	CLOSE	DOZEN	FLEET	GROOM
BISON	CABLE	CLOTH	DRAFT	FLOAT	GROUP
BLACK	CACHE	CLOUD	DRAIN	FLOCK	GUARD
BLAME	CADET	CLOWN	DRAMA	FLOOR	GUESS
BLAND	CAMEL	CLUES	DREAM	FLORA	GUEST
BLANK	CAMEO	COACH	DRESS	FLOSS	GUIDE
BLARE	CANAL	COAST	DRIFT	FLOUR	HABIT
BLAST	CANDY	COBRA	DRIVE	FLUID	HANDS
BLAZE	CANOE	COMET	DWELL	FLUTE	HANDY
BLEND	CARGO	COMIC	EAGLE	FOCUS	HAPPY

HARDY	JUROR	MEDIA	NOISY	PILOT	QUIRK
HASTE	KARAT	MELON	NOMAD	PINCH	QUITE
HATCH	KAYAK	MERCY	NORTH	PINTO	QUITS
HEARD	KNACK	MERGE	NOVEL	PITCH	QUOTA
HEART	KNEAD	MERIT	NUDGE	PIVOT	QUOTE
HEAVY	KNOCK	MERRY	NURSE	PIXEL	RADAR
HEDGE	KOALA	MESSY	NYLON	PIZZA	RADIO
HELLO	LABEL	METAL	OASIS	PLACE	RAISE
HINGE	LACES	METER	OCCUR	PLAID	RALLY
HIPPO	LADLE	MIDST	OCEAN	PLAIN	RANCH
HITCH	LAKES	MIGHT	OFFER	PLANE	RANGE
HOBBY	LAMBS	MILKY	OFTEN	PLANK	RAPID
HONEY	LAPEL	MIMIC	OLIVE	PLANT	RATIO
HONOR	LAPSE	MINCE	ONION	PLATE	RAVEN
HORSE	LARGE	MINED	OPERA	PLUMB	RAZOR
HOTEL	LASER	MINES	OPTIC	PLUME	REACH
HOUND	LATCH	MINOR	ORBIT	PLUSH	REACT
HOUSE	LATER	MIRTH	ORDER	PLUTO	READY
HUMAN	LAUGH	MITER	OTHER	POINT	RECAP
HUMID	LAYER	MIXED	OTTER	POLAR	REFER
HUMOR	LEAFY	MODEM	OUGHT	POLKA	REGAL
HUNCH	LEARN	MOIST	OUNCE	POPPY	REIGN
HURRY	LEASE	MONEY	OUTDO	PORCH	RELAX
HUTCH	LEASH	MONTH	OZONE	POUCH	RELAY
HYDRO	LEAST	MOODY	PAILS	POUND	RELIC
HYPER	LEAVE	MOOSE	PAINT	POWER	RENEW
IDEAL	LEDGE	MOTOR	PALMS	PRESS	REPLY
IDEAS	LEGAL	MOTTO	PANDA	PRICE	RESET
IGLOO	LEMON	MOUSE	PANEL	PRIDE	RETRY
IMAGE	LEVEL	MOUTH	PAPER	PRIME	REUSE
IMPLY	LEVER	MOVER	PARCH	PRINT	RHINO
INDEX	LIGHT	MOVIE	PARTY	PRIOR	RHYME
INFER	LILAC	MUDDY	PASTA	PRISM	RIDGE
INNER	LIMIT	MUNCH	PASTE	PRIZE	RIGHT
INPUT	LINEN	MURAL	PATCH	PROOF	RINSE
IRATE	LINGO	MUSIC	PATIO	PROSE	RISEN
IRONY	LIVID	NACHO	PAUSE	PROUD	RIVAL
ISSUE	LOBBY	NAIVE	PEACE	PUPIL	RIVER
ITEMS	LOCAL	NASAL	PEACH	PURSE	ROAST
IVORY	LODGE	NATAL	PEALS	PUTTY	ROBIN
JAUNT	LOGIC	NERVE	PEARL	QUAIL	ROBOT
JEANS	LOOSE	NEVER	PECAN	QUAKE	RODEO
JELLY	LOYAL	NEWER	PEDAL	QUART	ROTOR
JEWEL	LUCKY	NICHE	PENNY	QUEEN	ROUGH
JOIST	LUNAR	NIECE	PETAL	QUERY	ROUND
JOKER	LUNCH	NIGHT	PETTY	QUEST	ROUTE
JOLLY	LYRIC	NINES	PHASE	QUEUE	ROYAL
JOUST	MAUVE	NINTH	PHONE	QUICK	RULES
JUDGE	MAYBE	NOBLE	PHOTO	QUIET	RURAL
JUICE	MAYOR	NOBLY	PIANO	QUILL	SALAD
JUMBO	MEDAL	NOISE	PIECE	QUILT	SALON

SALVE	SINUS	SPOOL	SWARM	TRACE	VENUS
SATIN	SIREN	SPOON	SWEAT	TRACK	VERGE
SAUCE	SKATE	SPORT	SWEEP	TRADE	VERSE
SAUNA	SKIED	SPOUT	SWEET	TRAIL	VIDEO
SCALD	SKIES	SPRAY	SWIFT	TRAIN	VILLA
SCALE	SKILL	SQUAD	SWING	TRAIT	VINYL
SCARF	SLACK	SQUID	SWIRL	TRASH	VISIT
SCENE	SLANG	STACK	SWOON	TREAT	VISOR
SCENT	SLANT	STAFF	SYRUP	TREND	VITAL
SCOFF	SLASH	STAGE	TABLE	TRIAL	VIVID
SCOLD	SLATE	STAIN	TANGO	TRIBE	VOCAL
SCOOP	SLEEK	STAIR	TASTE	TRICK	VOGUE
SCOOT	SLEEP	STAKE	TEACH	TROOP	VOICE
SCORE	SLICE	STAMP	TEETH	TROUT	VOTER
SCOUT	SLICK	STAND	TEMPO	TRUCE	WAGON
SCRAP	SLIDE	STARE	TEMPT	TRUCK	WAIST
SCRUB	SLOOP	START	TENOR	TRUNK	WALTZ
SCUBA	SLOPE	STATE	TENSE	TRUST	WASTE
SEIZE	SMALL	STEAK	THANK	TRUTH	WATCH
SENSE	SMART	STEAM	THEIR	TULIP	WATER
SERVE	SMELL	STEEL	THEME	TWEAK	WAVER
SEVEN	SMILE	STEEP	THERE	TWEED	WEAVE
SHADE	SMOCK	STEER	THESE	TWINE	WEDGE
SHAKE	SNACK	STICK	THICK	TWIRL	WEIGH
SHALE	SNAIL	STILL	THING	TWIST	WHALE
SHALL	SNAKE	STING	THINK	UNCLE	WHARF
SHAME	SNEAK	STOCK	THIRD	UNDER	WHEAT
SHAPE	SNIFF	STOMP	THORN	UNFIT	WHEEL
SHARE	SNORE	STONE	THOSE	UNIFY	WHERE
SHARK	SNOWY	STORE	THREE	UNION	WHICH
SHARP	SOGGY	STORK	THROW	UNITY	WHILE
SHAVE	SOLAR	STORM	THUMB	UNTIE	WHIRL
SHAWL	SOLID	STORY	THUMP	UNTIL	WHITE
SHEEP	SOLVE	STOVE	TIDAL	UPPER	WHOLE
SHEER	SONAR	STRAP	TIGER	UPSET	WHOSE
SHEET	SONIC	STRAW	TIGHT	URBAN	WIDEN
SHELF	SORRY	STRAY	TIMID	USAGE	WIDTH
SHELL	SOUND	STRUT	TITLE	USHER	WINDY
SHIFT	SOUTH	STUCK	TOAST	USUAL	WORLD
SHINE	SPACE	STUDY	TODAY	USURP	WORRY
SHIRT	SPARE	STUFF	TOKEN	UTTER	WORTH
SHOAL	SPARK	STUNT	TOOTH	VAGUE	WOVEN
SHOCK	SPEAK	STYLE	TOPIC	VALET	WRECK
SHOES	SPEAR	SUAVE	TORCH	VALID	WRIST
SHORE	SPEED	SUEDE	TOTAL	VALOR	WRITE
SHORT	SPELL	SUGAR	TOTEM	VALUE	WRONG
SHRED	SPICE	SUITE	TOUCH	VALVE	YACHT
SHRUB	SPIKE	SUNNY	TOUGH	VAPOR	YEARN
SIEGE	SPILL	SUPER	TOWEL	VAULT	YIELD
SIGHT	SPLIT	SURGE	TOWER	VENOM	YOUNG
SINCE	SPOIL	SWAMP	TOXIC	VENUE	YOUTH

ZEBRA	APPEAL	BARTER	BUDGET	CIRCUS	DANCER
ABACUS	APPEAR	BASKET	BUFFET	CITRUS	DANGER
ABROAD	APPEND	BATTER	BURDEN	CLAUSE	DARING
ABRUPT	ARCADE	BATTLE	BUREAU	CLEVER	DAZZLE
ABSENT	ARCHER	BAUBLE	BURLAP	CLIENT	DEBATE
ABSORB	ARCTIC	BAZAAR	BURROW	CLINCH	DECADE
ACCENT	ARGENT	BEACON	BUSHEL	CLOSET	DECENT
ACCEPT	ARMADA	BEAGLE	BUTTER	CLOUDS	DECIDE
ACCESS	AROUND	BEAKER	BUTTON	CLOUDY	DECODE
ACCORD	ARREST	BEARER	CACTUS	CLOVER	DEDUCE
ACCRUE	ARRIVE	BEAUTY	CAMERA	COBWEB	DEFEAT
ACCUSE	ARTERY	BECAME	CAMPUS	COCOON	DEFINE
ACETIC	ARTIST	BECOME	CANADA	COFFEE	DEGREE
ACORNS	ASCEND	BEFORE	CANARY	COGNAC	DELUGE
ACROSS	ASHORE	BEHALF	CANCEL	COLLAR	DEMAND
ACTING	ASLEEP	BEHAVE	CANDID	COLONY	DENIAL
ACTION	ASPECT	BEHIND	CANDLE	COLUMN	DENTAL
ACTIVE	ASPIRE	BETTER	CANINE	COMEDY	DEPART
ACTUAL	ASSERT	BEWARE	CANOPY	COMMIT	DEPEND
ADJUST	ASSESS	BEYOND	CANVAS	COMMON	DEPICT
ADMIRE	ASSETS	BICEPS	CANYON	COMPEL	DERAIL
ADRIFT	ASSIGN	BILLOW	CARAFE	COMPLY	DERIVE
ADSORB	ASSIST	BINARY	CARBON	CONVEX	DESERT
ADVERB	ASSUME	BINDER	CAREER	CONVEY	DESIGN
ADVICE	ASSURE	BIONIC	CARPET	CONVOY	DESIRE
ADVISE	ASTUTE	BOILER	CARROT	COOKIE	DETACH
AERIAL	ATTACH	BORDER	CARTON	COPIER	DETAIL
AFFAIR	ATTAIN	BORING	CASHEW	COPPER	DETOUR
AFFECT	ATTEND	BORROW	CASTLE	CORNER	DEVICE
AFFIRM	ATTEST	BOTANY	CASUAL	CORRAL	DEVOTE
AFFORD	AUTUMN	BOTHER	CATTLE	COSMIC	DIESEL
AFLOAT	AVALON	BOTTLE	CAVERN	COTTON	DIGEST
AFRAID	AVENUE	BOTTOM	CELERY	COUGAR	DILUTE
AGENCY	AWHILE	BOUNCE	CELLAR	COUPLE	DINNER
AGENDA	AZALEA	BOVINE	CEMENT	COUPON	DIRECT
AGHAST	BABBLE	BOWLER	CENSUS	COURSE	DISHES
ALCOVE	BABOON	BRANCH	CENTER	COYOTE	DIVERT
ALLEGE	BADGER	BREACH	CEREAL	CRAFTY	DIVIDE
ALLIED	BAFFLE	BREATH	CHALET	CRATER	DOCTOR
ALLUDE	BAKERY	BREEZE	CHANCE	CRAVAT	DOLLAR
ALLURE	BALLET	BRIDGE	CHANGE	CRAYON	DOMAIN
ALMOND	BALLOT	BRIGHT	CHARGE	CREASE	DOMINO
ALMOST	BALSAM	BROACH	CHEESE	CREATE	DONATE
ALPINE	BAMBOO	BROKEN	CHOICE	CREDIT	DONKEY
AMBUSH	BANANA	BROKER	CHOOSE	CRITIC	DOSAGE
AMULET	BANDIT	BRONZE	CHORAL	CROCUS	DRAGON
ANTHEM	BANKER	BROWSE	CHORES	CRUISE	DREAMS
ANTLER	BANTER	BRUNCH	CHORUS	CRUNCH	DUPLEX
APATHY	BARBER	BUBBLE	CHROME	CURFEW	DURING
APIARY	BARLEY	BUCKET	CINEMA	CUSTOM	EASILY
APPALL	BARREL	BUCKLE	CIRCLE	DAMAGE	EDITOR

EFFECT	FLAWED	HEATER	JERSEY	LISTEN	MISHAP
EFFORT	FLEECE	HECKLE	JESTER	LITTLE	MISSES
EITHER	FLIGHT	HECTIC	JIGGLE	LIVING	MISTED
EMERGE	FLORAL	HEIGHT	JIGSAW	LIZARD	MITTEN
EMPIRE	FLOWER	HELIUM	JINGLE	LOCATE	MOBILE
ENAMEL	FLYING	HELMET	JOCKEY	LOCKER	MODERN
ENCODE	FOLLOW	HERMIT	JOKING	LOTION	MODEST
ENCORE	FOREST	HIATUS	JOVIAL	LOUNGE	MODIFY
ENDURE	FORGET	HIKING	JOYFUL	LOVELY	MODULE
ENERGY	FORMAL	HOBBLE	JOYOUS	LUMBER	MOMENT
ENGINE	FORMAT	HOCKEY	JUGGLE	LUXURY	MONKEY
ENIGMA	FORMER	HOLLOW	JUMBLE	MAGNET	MORROW
ENOUGH	FOSSIL	HONEST	JUNGLE	MAMMAL	MORTAR
ENSIGN	FREEZE	HORNET	JUNIOR	MANAGE	MOTION
ENTAIL	FRIEND	HUDDLE	KARATE	MANNER	MOTIVE
ENTIRE	FROLIC	HUMANE	KENNEL	MANUAL	MURMUR
ENTITY	FROZEN	HUMBLE	KERNEL	MARBLE	MUSCLE
EQUITY	FRUGAL	HUNGER	KETTLE	MARGIN	MUSEUM
ERASER	FUNNEL	HUNGRY	KINDLY	MARINE	MUSKOX
ERRAND	FUSION	HURDLE	KITTEN	MARKER	MUSLIN
ESCAPE	FUTURE	HUSTLE	KNIGHT	MARKET	MUSSEL
ESTATE	GADGET	HYPHEN	LABELS	MARLIN	MUTINY
ESTEEM	GALAXY	ICICLE	LACTIC	MAROON	MUTUAL
EXCEED	GARDEN	IMMUNE	LADDER	MARVEL	MYRIAD
EXCESS	GATHER	IMPACT	LADIES	MASCOT	MYRTLE
EXCUSE	GAZEBO	IMPEDE	LAGOON	MASTER	MYSELF
EXHALE	GENIUS	IMPORT	LARGER	MATRIX	MYSTIC
EXPAND	GENTLE	IMPOSE	LARYNX	MATTER	NAPKIN
EXPECT	GLIDER	INCHES	LATELY	MATURE	NARROW
EXPERT	GLOBAL	INCOME	LATEST	MEADOW	NATION
FABRIC	GLOOMY	INDEED	LAUNCH	MEDIUM	NEEDLE
FACADE	GLOSSY	INDOOR	LAWFUL	MELLOW	NEGATE
FACIAL	GOBLET	INFANT	LAWYER	MELODY	NEPHEW
FACTOR	GOGGLE	INFORM	LAYOUT	MEMBER	NETTLE
FALCON	GOLDEN	INNING	LEADER	MEMORY	NEURAL
FAMILY	GOLFER	INSECT	LEAGUE	MERLIN	NEURON
FAMOUS	GOSSIP	INSIDE	LEAVES	METEOR	NEWTON
FARMER	GOVERN	INSIST	LEDGER	METHOD	NIBBLE
FASTEN	GRAPES	INTACT	LEEWAY	METRIC	NICELY
FASTER	GROUND	INTEND	LEGACY	METTLE	NICKEL
FATHER	GROWTH	INTERN	LEGEND	MIDDLE	NIMBLE
FAUCET	GUITAR	INVEST	LENDER	MIDWAY	NIMBLY
FEEDER	GYPSUM	INVITE	LENGTH	MIGHTY	NIMBUS
FELINE	HAMLET	IODINE	LESSON	MINGLE	NOBODY
FIDDLE	HAMMER	ISLAND	LETTER	MINNOW	NORMAL
FIGURE	HAMPER	ITALIC	LIGHTS	MINTED	NOTARY
FILLER	HANDLE	ITSELF	LIKELY	MINUET	NOTICE
FILTER	HANGAR	JACKET	LILIES	MINUTE	NOTIFY
FINGER	HAPPEN	JAGUAR	LINEAR	MIRAGE	NOTING
FINISH	HARBOR	JARGON	LINGER	MIRROR	NOTION
FLAMES	HEALTH	JAUNTY	LIQUID	MISFIT	NOVICE

NOZZLE	PENCIL	PURIFY	RELATE	SAILOR	SIGNAL
NUANCE	PEOPLE	PURPLE	RELIEF	SALAMI	SILICA
NUGGET	PEPPER	PURSUE	RELISH	SALARY	SILVER
NUMBER	PERMIT	PUZZLE	REMAIN	SALINA	SIMPLE
NUZZLE	PERSON	PYTHON	REMARK	SALINE	SINGLE
OBJECT	PERUSE	QUAINT	REMEDY	SALTED	SISTER
OBTAIN	PHRASE	QUARRY	REMIND	SALUTE	SIZZLE
OCTAVE	PHYSIC	QUARTZ	REMOTE	SAMPLE	SKETCH
OFFICE	PICKED	QUENCH	REMOVE	SANDAL	SKIING
OFFSET	PICKLE	QUICHE	RENOWN	SATIRE	SLALOM
OLIVER	PICNIC	QUIVER	RENTAL	SATURN	SLEEVE
OMELET	PIECED	RABBIT	REPAIR	SAVORY	SLEIGH
ONWARD	PIGEON	RACKET	REPEAT	SCARCE	SLEUTH
OPAQUE	PILLAR	RADISH	REPLAY	SCHEME	SLIGHT
OPTION	PILLOW	RADIUM	REPORT	SCHOOL	SLOGAN
ORANGE	PILOTS	RADIUS	RERUNS	SCORCH	SLOWLY
ORCHID	PIRATE	RAFFLE	RESCUE	SCRAPE	SNAZZY
ORIGIN	PISTON	RAISIN	RESIDE	SCREAM	SNEEZE
ORIOLE	PLANET	RAMBLE	RESIST	SCREEN	SOCCER
OUTFIT	PLAQUE	RANDOM	RESORT	SCRIBE	SOCIAL
OUTING	PLASMA	RANGER	RESTED	SCRIPT	SODIUM
OUTLAW	PLEASE	RAPIDS	RESULT	SCROLL	SOFTEN
OUTPUT	PLEDGE	RAPPEL	RESUME	SCYTHE	SOFTER
OUTRUN	PLURAL	RASCAL	RETAIL	SEARCH	SOFTLY
OUTSET	POCKET	RATHER	RETIRE	SEASON	SOLEMN
OXYGEN	PODIUM	RATING	RETURN	SEATED	SOMBER
OYSTER	POETRY	RATTLE	REVEAL	SECOND	SONNET
PACIFY	POLICE	RAVINE	REVIEW	SECRET	SOOTHE
PACKED	POLICY	REALLY	REWARD	SECURE	SORROW
PADDLE	POLISH	REASON	REWIND	SEESAW	SOURCE
PAJAMA	POLITE	REBATE	RHYTHM	SELDOM	SPARSE
PALACE	POLLEN	RECALL	RIBBON	SELECT	SPEECH
PALLET	PONIES	RECENT	RIDDLE	SENATE	SPIDER
PAMPER	POODLE	RECESS	RIPPLE	SENIOR	SPIRAL
PANTRY	POPLAR	RECIPE	RITUAL	SENSOR	SPIRIT
PARADE	POROUS	RECORD	ROBUST	SEQUEL	SPLASH
PARCEL	PORTER	REDEEM	ROCKET	SERENE	SPLINT
PARDON	POSSUM	REDUCE	RODENT	SERIES	SPOKEN
PARENT	POTATO	REFILL	ROSTER	SESAME	SPONGE
PARLOR	POWDER	REFINE	ROTATE	SETTLE	SPORTS
PARROT	PREFER	REFLEX	RUDDER	SHADOW	SPRAIN
PASTEL	PREFIX	REFORM	RUFFLE	SHAGGY	SPREAD
PASTRY	PRETTY	REFUEL	RUNNER	SHELVE	SPRING
PATENT	PROFIT	REFUGE	RUNOFF	SHIELD	SPRINT
PATROL	PROMPT	REFUND	RUNWAY	SHIVER	SPROUT
PAUPER	PROPER	REFUSE	RUSSET	SHOULD	SPRUCE
PAYOUT	PUBLIC	REGAIN	RUSTLE	SHOVEL	SQUALL
PEAKED	PUDDLE	REGARD	SACHET	SHOWER	SQUARE
PEANUT	PULLEY	REGION	SADDLE	SHRIMP	SQUASH
PEBBLE	PUPPET	REGRET	SAFARI	SHRINK	SQUEAK
PEDDLE	PURELY	REJECT	SAFELY	SIERRA	SQUEAL

SQUINT	TARGET	UNGLUE	WASHER	ALFALFA	ATTEMPT
SQUIRE	TARTAN	UNIQUE	WEALTH	ALGEBRA	ATTRACT
STABLE	TATTOO	UNLESS	WEASEL	ALLERGY	AUCTION
STAPLE	TENANT	UNLIKE	WICKER	ALMANAC	AUDIBLE
STATIC	TENDER	UNLOAD	WILLOW	ALMONDS	AUDITOR
STATUE	TENDON	UNLOCK	WINDOW	ALREADY	AVERAGE
STATUS	TENNIS	UNPACK	WINTER	ALUMNUS	AVIATOR
STEADY	TENURE	UNPLUG	WISDOM	AMAZING	AVOCADO
STEREO	THANKS	UNTIDY	WITHIN	AMIABLE	AWESOME
STITCH	THEORY	UNWIND	WOBBLE	AMMONIA	AWKWARD
STORMY	THESIS	UNWRAP	WONDER	AMNESIA	AWNINGS
STRAIN	THIRST	UPDATE	WORTHY	AMPLIFY	BACKLOG
STRAIT	THREAD	UPHILL	WRENCH	AMUSING	BAGGAGE
STREAK	THRIFT	UPLIFT	WRITER	ANAGRAM	BALANCE
STREAM	THRILL	UPRISE	YELLOW	ANALOGY	BALCONY
STREET	THROAT	UPROAR	YONDER	ANALYST	BALLOON
STRIDE	THRONE	UPSIDE	ZENITH	ANALYZE	BANDAGE
STRIKE	TICKET	UPWARD	ZIGZAG	ANARCHY	BANQUET
STRING	TICKLE	URGENT	ZIPPER	ANATOMY	BARBELL
STRIVE	TIMBER	USEFUL	ZODIAC	ANCIENT	BARGAIN
STROBE	TISSUE	UTMOST	ABANDON	ANDROID	BAROQUE
STROLL	TOFFEE	UTOPIA	ABDOMEN	ANGUISH	BARRIER
STRONG	TOMATO	VACANT	ABILITY	ANIMATE	BATTERY
STRUCK	TONGUE	VACATE	ABOLISH	ANNUITY	BEANBAG
STUCCO	TONSIL	VACUUM	ABSENCE	ANOMALY	BEARING
STUDIO	TOPEKA	VALLEY	ACADEMY	ANOTHER	BECAUSE
STURDY	TOPPLE	VANISH	ACCLAIM	ANSWERS	BEDPOST
SUBDUE	TOUCAN	VANITY	ACCOUNT	ANTENNA	BEDROCK
SUBLET	TOWARD	VELVET	ACHIEVE	ANTIQUA	BEEHIVE
SUBMIT	TRANCE	VENDOR	ACQUIRE	ANTONYM	BELATED
SUBTLE	TRAVEL	VERIFY	ACREAGE	ANXIETY	BELLBOY
SUBURB	TREATY	VERTEX	ACROBAT	ANXIOUS	BENEATH
SUBWAY	TREMOR	VESSEL	ACTRESS	ANYBODY	BENEFIT
SUDDEN	TRENCH	VIALE	ADDRESS	APOLOGY	BEQUEST
SUMMER	TRIVIA	VICTOR	ADJOURN	APPAREL	BESIDES
SUMMIT	TROPHY	VIOLET	ADMIRAL	APPEASE	BESIEGE
SUNDAE	TUMBLE	VIOLIN	ADVANCE	APPLAUD	BETWEEN
SUNSET	TUNNEL	VIRTUE	ADVERSE	APPLIES	BICYCLE
SUPERB	TURKEY	VISION	AEROBIC	APPOINT	BILLION
SUPPER	TURNIP	VISUAL	AEROSOL	APRICOT	BIOLOGY
SUPPLY	TURTLE	VOLLEY	AFFLICT	AQUATIC	BISCUIT
SURREY	TUXEDO	VOLUME	AGAINST	ARCHAIC	BLANKET
SURVEY	TWELVE	VOYAGE	AGELESS	ARRANGE	BLATANT
SWITCH	TWENTY	WAFFLE	AGILITY	ARRIVAL	BLOSSOM
SYMBOL	TYCOON	WAITER	AGITATE	ARTICLE	BLUNDER
SYSTEM	TYPIST	WALLET	AILMENT	ARTISAN	BOBSLED
TACKLE	UMPIRE	WALNUT	AIMLESS	ASHAMED	BOLSTER
TACTIC	UNABLE	WALRUS	AIRFARE	ASPHALT	BONANZA
TAILOR	UNEASY	WANDER	AIRLINE	ASSURED	BONFIRE
TALENT	UNFAIR	WARDEN	AIRPORT	ASTOUND	BOOSTER
TAMPER	UNFOLD	WARMTH	ALCHEMY	ATHLETE	BOREDOM

BOULDER	CHRONIC	COOKIES	DISCUSS	FEATHER	GRIDDLE
BOUQUET	CIRCUIT	CORDIAL	DISMISS	FEATURE	GRIZZLY
BOWLING	CITIZEN	CORONET	DISPLAY	FEDERAL	GROCERY
BRACKET	CLASSIC	COUNTER	DISPUTE	FEELING	GUITARS
BREATHE	CLEANER	CURIOUS	DISTANT	FERTILE	GYMNAST
BREVITY	CLEANSE	CURTAIN	DISTILL	FICTION	HABITAT
BRISTLE	CLIMATE	CUSHION	DISTORT	FINANCE	HAIRCUT
BROTHER	CLUSTER	CYCLIST	DISTURB	FINESSE	HAIRPIN
BUFFALO	CLUTTER	CYCLONE	DIVERGE	FISSION	HALOGEN
BUILDER	COASTAL	DAMSELS	DIVERSE	FIXTURE	HAMMOCK
BULLPEN	COCONUT	DANCING	DIVIDED	FLANNEL	HAMSTER
CABARET	COLLECT	DECEIVE	DOLPHIN	FLATTEN	HARMONY
CABBAGE	COLLEGE	DECIBEL	DOORWAY	FLORIST	HARNESS
CABINET	COLLIDE	DECIMAL	DORMANT	FOOLISH	HARVEST
CABOOSE	COMBINE	DECLARE	DRESSER	FOREIGN	HEALTHY
CADENCE	COMFORT	DECLINE	DRIZZLE	FOREVER	HEATHER
CALCIUM	COMMAND	DEFAULT	DYNAMIC	FORGIVE	HEIRESS
CALORIE	COMMEND	DEFENSE	DYNASTY	FORMULA	HELPFUL
CALVARY	COMMENT	DEFLECT	EARDRUM	FORTUNE	HELPING
CALYPSO	COMMUNE	DEFROST	ECLIPSE	FORWARD	HERRING
CANTEEN	COMPACT	DEGREES	ECONOMY	FOUNDER	HERSELF
CANYONS	COMPANY	DELIGHT	EDITION	FRAGILE	HEXAGON
CAPITAL	COMPARE	DELIVER	EDUCATE	FRANTIC	HICKORY
CAPSULE	COMPASS	DENSITY	ELEGANT	FREEDOM	HISTORY
CAPTAIN	COMPETE	DENTIST	ELEMENT	FREEWAY	HOBBIES
CAPTION	COMPLEX	DEplete	ELEVATE	FREIGHT	HOLIDAY
CAPTIVE	COMPUTE	DEPOSIT	ELLIPSE	FRIGATE	HONESTY
CARAMEL	CONCEAL	DEPRIVE	ELUSIVE	FUNERAL	HOPEFUL
CAREFUL	CONCEDE	DERRICK	EMERALD	FURIOUS	HORIZON
CARIBOU	CONCEPT	DESCEND	EMOTION	GALLERY	HOSTESS
CARRIER	CONCERN	DESCENT	ENCLOSE	GARNISH	HOUSTON
CARTOON	CONCERT	DESERVE	ENQUIRY	GENERAL	HOWEVER
CASCADE	CONCISE	DESKTOP	ENTROPY	GENERIC	HUSBAND
CATALOG	CONDUCT	DESPITE	EQUINOX	GENUINE	HYDRANT
CAUTION	CONDUIT	DESSERT	ERRATIC	GEOLOGY	HYGIENE
CEILING	CONFIRM	DESTINY	ESSENCE	GESTURE	ICEBERG
CENTRAL	CONFORM	DEVELOP	EVENING	GIRAFFE	IMAGINE
CENTURY	CONFUSE	DEWDROP	EXAMINE	GLACIAL	IMITATE
CERTAIN	CONNECT	DIAGRAM	EXAMPLE	GLACIER	IMMENSE
CERTIFY	CONSENT	DIALECT	EXHAUST	GLASSES	IMPRESS
CHAMBER	CONSIST	DIAMOND	EXPENSE	GLIMMER	IMPRINT
CHANNEL	CONSOLE	DICTATE	EXPLAIN	GLIMPSE	IMPROVE
CHAPTER	CONSULT	DIFFUSE	EXPRESS	GOLFING	IMPULSE
CHARADE	CONSUME	DIGITAL	EXTREME	GONDOLA	INCLUDE
CHARIOT	CONTACT	DIGNIFY	FACTORS	GOODBYE	INDOORS
CHARTER	CONTAIN	DIGNITY	FACTORY	GORILLA	INERTIA
CHASSIS	CONTENT	DILEMMA	FACULTY	GRADUAL	INFLATE
CHATTER	CONTEST	DIPLOMA	FANFARE	GRAMMAR	INHABIT
CHEETAH	CONTEXT	DISCARD	FARTHER	GRANOLA	INHERIT
CHICKEN	CONTOUR	DISCERN	FASHION	GRAPHIC	INQUIRE
CHIMNEY	CONVENE	DISCORD	FATIGUE	GRAVITY	INSPECT

INSPIRE	MAJESTY	NEMESIS	PARSLEY	PREFACE	RAVIOLI
INSTALL	MANAGER	NEPTUNE	PARSONS	PRELUDE	READOUT
INSTANT	MANDATE	NERVOUS	PARTIAL	PREMIUM	REALIGN
INSTEAD	MANNERS	NETWORK	PARTNER	PRETEND	REALISM
INSTILL	MANSION	NEUTRAL	PASSAGE	PRETZEL	REALITY
IRONING	MARBLES	NOMINAL	PASSIVE	PREVAIL	REALIZE
ISOLATE	MARQUEE	NOMINEE	PASTURE	PREVENT	REALTOR
ITALICS	MASONRY	NONSTOP	PATIENT	PREVIEW	REASONS
ITEMIZE	MASSIVE	NOSTRIL	PATRIOT	PRIMARY	REBOUND
JEWELER	MAXIMUM	NOTABLE	PATTERN	PRINTER	REBUILD
JEWELRY	MEANING	NOTHING	PAUSING	PRIVATE	RECEIPT
JOGGING	MEASURE	NOURISH	PAYLOAD	PROBLEM	RECEIVE
JUGGLER	MEDIATE	NOVELTY	PEACOCK	PROCEED	RECITAL
JUNIPER	MEDICAL	NUMERAL	PELICAN	PROCESS	RECLAIM
JUSTIFY	MEETING	NURSERY	PENALTY	PROCURE	RECLINE
KETTLES	MENTION	OATMEAL	PERCENT	PRODUCE	RECOVER
KEYHOLE	MERCURY	OBSCURE	PERFECT	PRODUCT	RECRUIT
KINGDOM	MERMAID	OBSERVE	PERFORM	PROFILE	RECTIFY
KNEECAP	MESSAGE	OBVIOUS	PERFUME	PROGRAM	RECYCLE
LACKING	METEORS	OCTAGON	PERHAPS	PROJECT	REFEREE
LANDING	MIGRATE	OCTOBER	PERPLEX	PROMISE	REFINED
LANTERN	MILEAGE	OCTOPUS	PERSIST	PRONOUN	REFLECT
LASTING	MINERAL	ODYSSEY	PHANTOM	PROTECT	REFRAIN
LAUNDRY	MINIMAL	OFFENSE	PIANIST	PROTEIN	REFRESH
LECTURE	MINIMUM	OPERATE	PICCOLO	PROVERB	REFUSAL
LEISURE	MINUTES	OPINION	PICTURE	PROVIDE	REGIMEN
LENGTHY	MIRACLE	OPTICAL	PIGMENT	PROWESS	REGULAR
LENIENT	MISSILE	ORCHARD	PILLOWS	PRUDENT	REJOICE
LEOPARD	MISSING	OREGANO	PINBALL	PUDDING	RELAPSE
LETTUCE	MISSION	ORGANIC	PIONEER	PUMPKIN	RELEASE
LEXICON	MISTAKE	OSTRICH	PIRATES	PUPPIES	RELIEVE
LIBERTY	MITTENS	OUTDOOR	PITCHER	PURPOSE	REMARKS
LIBRARY	MIXTURE	OUTLOOK	PLANNED	PURRING	REMNANT
LICENSE	MOISTEN	OUTPOST	PLASTER	PURSUIT	REMODEL
LIONESS	MOLLUSK	OUTRAGE	PLASTIC	PUZZLED	RENEWAL
LIQUIDS	MONITOR	OUTSIDE	PLATEAU	PYRAMID	REPLACE
LITERAL	MONSOON	OVERALL	PLATOON	QUALIFY	REPLICA
LOBSTER	MOORING	OVERJOY	PLIABLE	QUALITY	REPTILE
LOGGING	MORAINE	OXIDIZE	PLUMAGE	QUARTER	REQUEST
LOOMING	MORNING	PACIFIC	POLYGON	QUARTET	REQUIRE
LOTTERY	MUFFLER	PACKAGE	POMPOUS	QUICKLY	RESERVE
LOVABLE	MUNDANE	PADDOCK	POPCORN	QUIETLY	RESIDUE
LOYALTY	MUSICAL	PADLOCK	POPULAR	RACCOON	RESOLVE
LOZENGE	MUSKRAT	PAGEANT	PORTAGE	RADIATE	RESPECT
LUGGAGE	MUSTANG	PAJAMAS	PORTRAY	RADICAL	RESPOND
LULLABY	MUSTARD	PANCAKE	POSTAGE	RAILWAY	RESTFUL
MACHINE	MYSTERY	PANTHER	POSTURE	RAINBOW	RESTORE
MAGENTA	NARRATE	PARADED	POWERED	RAMBLER	RETREAT
MAGICAL	NATURAL	PARADOX	PRAIRIE	RANCHER	REUNION
MAGNIFY	NECKTIE	PARASOL	PRECEDE	RANKING	REVENUE
MAILBOX	NEITHER	PARKING	PREDICT	RAPPORT	REVERSE

REVOLVE	SEVENTY	STYLISH	TRICEPS	VULTURE	AIRPLANE
REWRITE	SEVERAL	SUBSIDE	TRILOGY	WALLABY	AIRSPEED
RHUBARB	SHAMPOO	SUCCEED	TRIUMPH	WARNING	AIRTIGHT
ROASTED	SHATTER	SUCCESS	TRIVIAL	WASHING	ALLOCATE
ROMANCE	SHELTER	SUGGEST	TROLLEY	WAYBILL	ALPHABET
ROOFTOP	SHERIFF	SUMMARY	TROUBLE	WAYWARD	ALTITUDE
ROOSTER	SHIMMER	SUNBURN	TRUMPET	WEALTHY	ALUMINUM
ROSEBUD	SHUDDER	SUNDIAL	TUESDAY	WEATHER	AMBITION
ROUTINE	SHUFFLE	SUNDOWN	TUITION	WEDDING	AMORTIZE
ROWBOAT	SHUTTER	SUNRISE	TYPHOON	WEEKEND	ANACONDA
ROYALTY	SIBLING	SUPPORT	TYPICAL	WELCOME	ANALYSIS
RUNNING	SIGNIFY	SUPPOSE	UNAWARE	WESTERN	ANCESTOR
SALVAGE	SILENCE	SUPREME	UNCOVER	WHETHER	ANECDOTE
SANDALS	SILICON	SURFACE	UNDERGO	WHISKER	ANNOUNCE
SANDBAG	SINCERE	SURPLUS	UNICORN	WHISPER	ANTELOPE
SAPLING	SITTING	SUSPEND	UNIFORM	WHISTLE	ANYTHING
SARCASM	SIXTEEN	SUSTAIN	UNKNOWN	WICHITA	APPENDIX
SARDINE	SKIRTED	SWALLOW	UNUSUAL	WILDCAT	APPETITE
SAUSAGE	SKYDIVE	SWEATER	UPFRONT	WINNING	APPRAISE
SAWDUST	SKYLARK	SWIFTLY	UPGRADE	WISHFUL	APPROACH
SAWFISH	SLEIGHT	SYMPTOM	UPSTAGE	WITHOUT	APPROVAL
SAWMILL	SLUMBER	SYNONYM	UTENSIL	WITNESS	APTITUDE
SCALLOP	SMARTLY	TARNISH	UTILITY	WORKDAY	AQUARIUM
SCAMPER	SNIPPET	TEACHER	VACANCY	WRANGLE	ARACHNID
SCANNER	SNORKEL	TEDIOUS	VACCINE	WRAPPER	ARGUMENT
SCARLET	SNUGGLE	TENSION	VALIANT	ZILLION	ARMCHAIR
SCENTED	SOARING	TERRACE	VAMPIRE	ZOOLOGY	AROMATIC
SCIENCE	SOCIETY	TERRAIN	VANILLA	ABDICATE	ARPEGGIO
SCOOTER	SOLDIER	TERRIER	VARIETY	ABRASION	ARRANGED
SCRATCH	SOMEDAY	TEXTILE	VARIOUS	ABSOLUTE	ARROGANT
SCREECH	SOPRANO	THEATER	VARNISH	ABUNDANT	ARTIFACT
SCRUPLE	SPANIEL	THERMAL	VEHICLE	ACADEMIC	ARTISTIC
SCUTTLE	SPARKLE	THIRSTY	VENTURE	ACCIDENT	ASSEMBLE
SEAFOOD	SPARROW	THOUGHT	VERANDA	ACCOLADE	ASSEMBLY
SEAGULL	SPECIAL	THROUGH	VERBOSE	ACCOUNTS	ASTERISK
SEAPORT	SPINACH	THUNDER	VERDICT	ACCURACY	ASTEROID
SEASIDE	SPINDLE	TOASTER	VERSION	ACCURATE	ASTONISH
SEAWEED	SPONSOR	TONIGHT	VERTIGO	ACOUSTIC	ATHLETIC
SECTION	SQUEEZE	TOOLBOX	VIBRANT	ACQUAINT	ATLANTIC
SEGMENT	STADIUM	TORNADO	VICTORY	ADDENDUM	ATTITUDE
SEISMIC	STAMINA	TOURISM	VILLAGE	ADDITION	ATTORNEY
SELFISH	STANDBY	TOURIST	VINEGAR	ADEQUATE	AUDIENCE
SELLOUT	STAPLER	TRACTOR	VINTAGE	ADHESIVE	AUTOMATE
SELTZER	STARTLE	TRAFFIC	VIRTUAL	ADJACENT	AVIATION
SERIOUS	STATION	TRAGEDY	VISIBLE	ADMONISH	BACHELOR
SERVANT	STELLAR	TRAILER	VISITOR	ADVOCATE	BACKDROP
SERVICE	STOMACH	TRANSIT	VITAMIN	AEROBICS	BACKFIRE
SESSION	STORAGE	TRAPEZE	VOLCANO	AFFINITY	BACKPACK
SETBACK	STRANGE	TREETOP	VOLTAGE	AFFLUENT	BACKSPIN
SETTING	STRETCH	TREMBLE	VOUCHER	AIRBORNE	BACKWARD
SETTLER	STUDENT	TRIBUTE	VOYAGER	AIRCRAFT	BACKYARD

BACTERIA	CHAMPION	DARKROOM	ECONOMIC	GALACTIC	INSULATE
BAGPIPES	CHARCOAL	DAUGHTER	EGGPLANT	GENEROUS	INTENDED
BALLPARK	CHARISMA	DAYDREAM	ELDORADO	GEODESIC	INTERCOM
BALLROOM	CHECKERS	DAYLIGHT	ELECTION	GERANIUM	INTEREST
BANISTER	CHEERFUL	DECEMBER	ELECTRIC	GLORIOUS	INTERIOR
BARBECUE	CHESTNUT	DECIPHER	ELEPHANT	GLOSSARY	INTERNAL
BARRACKS	CHIPMUNK	DECISION	ELEVATOR	GOLDFISH	INTERVAL
BASEBALL	CINNAMON	DEDICATE	EMPHASIS	GRACEFUL	INTREPID
BASEMENT	CITATION	DEFIANCE	EMPLOYEE	GRADUATE	INTRIGUE
BATHROOM	CLARINET	DEFINITE	EMPLOYER	GRAPHICS	INVESTOR
BEGINNER	CLEARING	DELEGATE	ENGINEER	GRATUITY	IRRIGATE
BEHAVIOR	CODEWORD	DELICATE	ENQUIRER	GREENERY	IRRITATE
BEVERAGE	COHERENT	DELIVERY	ENTIRETY	GUARDIAN	JEALOUSY
BIRTHDAY	COINCIDE	DESCRIBE	ENTRANCE	GUIDANCE	JETLINER
BLACKOUT	COLESLAW	DESERVED	ENVELOPE	HANDBAGS	JUDGMENT
BLIZZARD	COLLAPSE	DESIGNER	EPILOGUE	HANDSOME	JUVENILE
BLUEBIRD	COLONIAL	DIAGNOSE	EQUALITY	HARDWARE	KANGAROO
BOATYARD	COLOSSAL	DIAGONAL	EQUATION	HARDWOOD	KEROSENE
BONAFIDE	COMMERCE	DIALOGUE	ESTIMATE	HAYSTACK	KINDNESS
BOOKCASE	COMPLAIN	DIAMETER	EVALUATE	HEADACHE	KNAPSACK
BOOKMARK	COMPLETE	DILIGENT	EVENTFUL	HEREDITY	LACROSSE
BOOKSHOP	COMPOUND	DIMINISH	EVERYDAY	HERITAGE	LAMINATE
BOOKWORM	COMPRESS	DIPLOMAT	EXERCISE	HILLSIDE	LANDLORD
BOULDERS	COMPUTER	DIRECTOR	EXPEDITE	HISTORIC	LANDMARK
BOUNDARY	CONCERTO	DISAGREE	EXTERIOR	HOLIDAYS	LANGUAGE
BOUTIQUE	CONCLUDE	DISASTER	EXTERNAL	HOLOGRAM	LANTERNS
BRACELET	CONCRETE	DISCOUNT	EYEGLASS	HOMEWORK	LATITUDE
BROCHURE	CONFETTI	DISCOVER	FABULOUS	HONEYBEE	LAUGHTER
BUILDING	CONFLICT	DISGUISE	FAMILIAR	HOSPITAL	LAWRENCE
BULLETIN	CONFOUND	DISKETTE	FAREWELL	HUMIDITY	LEAPFROG
BULLSEYE	CONQUEST	DISPATCH	FEEDBACK	HUMILITY	LEFTOVER
BUNGALOW	CONSERVE	DISPENSE	FESTIVAL	HYACINTH	LEMONADE
CALCULUS	CONSIDER	DISSOLVE	FILAMENT	HYDROGEN	LENGTHEN
CALENDAR	CONSTANT	DISTANCE	FIREWOOD	HYSTERIA	LEVERAGE
CALLIOPE	CONSUMER	DISTINCT	FLAGPOLE	ILLUSION	LICORICE
CALORIES	CONTINUE	DISTRACT	FLAMINGO	IMPOSING	LIFEBOAT
CAMPAIGN	CONTRACT	DISTRICT	FLOTILLA	INCIDENT	LIFETIME
CAMPFIRE	CONTRAST	DIVIDEND	FLOURISH	INCREASE	LIGAMENT
CANISTER	CONVERGE	DIVISION	FOOTBALL	INDIRECT	LIKELIKE
CAPACITY	CONVERSE	DOCUMENT	FORCEFUL	INDUSTRY	LINOLEUM
CARDINAL	CONVINCE	DOMESTIC	FORECAST	INFINITE	LIPSTICK
CAREFREE	COOKBOOK	DOMINANT	FOUNTAIN	INFINITY	LITERACY
CARELESS	CORRIDOR	DOMINION	FRACTION	INFORMAL	LITERARY
CARNIVAL	CRITICAL	DOUBTFUL	FRAGMENT	INFUSION	LOCATION
CARRIAGE	CROSSBAR	DOUGHNUT	FRECKLES	INNOCENT	LOGISTIC
CASSETTE	CUCUMBER	DOWNHILL	FREQUENT	INNOVATE	LOOPHOLE
CATAPULT	CUFFLINK	DOWNTOWN	FRESHMAN	INSECURE	LOWLANDS
CATEGORY	CUPBOARD	DRAWBACK	FRICTION	INSIGNIA	LUMINOUS
CAUSEWAY	CUSTOMER	DRESSING	FRIENDLY	INSTANCE	LUNCHEON
CAUTIOUS	CYLINDER	DRIVEWAY	FRONTIER	INSTINCT	MACARONI
CEREMONY	DAFFODIL	DWELLING	FUNCTION	INSTRUCT	MACKEREL

MAGAZINE	MOTHBALL	OVERHAUL	POSSIBLE	RELATIVE	SECRETLY
MAGICIAN	MOTORCAR	OVERTIME	POSTCARD	RELAXING	SECURITY
MAINLAND	MOTORIZED	OVERTURE	POSTPONE	RELEVANT	SEDATION
MAINTAIN	MOUNTAIN	OVERVIEW	PRACTICE	RELOCATE	SEDIMENT
MAJESTIC	MOVEMENT	PAMPHLET	PRECINCT	REMEMBER	SEMESTER
MAJORITY	MULBERRY	PANORAMA	PRECIOUS	REMINDER	SENSIBLE
MANDOLIN	MULTIPLE	PARABOLA	PRESENCE	REPHRASE	SENTENCE
MANEUVER	MULTIPLY	PARADIGM	PRESSURE	REPLACED	SEPARATE
MANICURE	MUSHROOM	PARADISE	PRESTIGE	REPORTER	SEQUENCE
MANIFEST	MUSTACHE	PARAFFIN	PREVIOUS	REPUBLIC	SERENADE
MANIFOLD	NAMESAKE	PARAKEET	PRIMROSE	RESEARCH	SHAMROCK
MARATHON	NAUTILUS	PARALLAX	PRIORITY	RESIDENT	SHEPHERD
MARGINAL	NAVIGATE	PARALLEL	PRISTINE	RESOLVED	SHERBERT
MARIGOLD	NECKLACE	PARKLAND	PRODUCER	RESONANT	SHILLING
MARINADE	NEEDLESS	PARTICLE	PROGRESS	RESOURCE	SHIPMATE
MARINATE	NEIGHBOR	PASSPORT	PROPERLY	RESPONSE	SHIPMENT
MARITIME	NEWCOMER	PASSWORD	PROPERTY	RESTLESS	SHIPYARD
MARRIAGE	NEWSCAST	PATIENCE	PROSPECT	RESTRAIN	SHOELACE
MATERIAL	NICKNAME	PAVEMENT	PROTOCOL	RESTRICT	SHOPPING
MATTRESS	NINETEEN	PAVILION	PROVINCE	RESTROOM	SHOULDER
MAVERICK	NINETIES	PEACOCKS	PULLOVER	REVIEWER	SHOWBOAT
MEANTIME	NITROGEN	PEDESTAL	PUNCTUAL	REVISION	SHOWERED
MECHANIC	NOBILITY	PEDICURE	PURCHASE	RHAPSODY	SHOWROOM
MEDICINE	NOBLEMAN	PEGBOARD	QUADRANT	RHETORIC	SHUTDOWN
MEDIOCRE	NOMINATE	PENDULUM	QUANTIFY	ROMANTIC	SIDELINE
MERCHANT	NONSENSE	PENGUINS	QUANTITY	ROTATION	SIDESTEP
MERCIFUL	NORMALLY	PERCEIVE	QUESTION	SAILBOAT	SIDEWALK
MERIDIAN	NORTHERN	PERIODIC	QUICKEST	SAILFISH	SIDEWAYS
MERINGUE	NOTARIZE	PERMEATE	QUOTIENT	SANCTITY	SIMPLIFY
METALLIC	NOVEMBER	PEROXIDE	RADIATOR	SANDWICH	SIMULATE
METAPHOR	NUISANCE	PERSONAL	RAILROAD	SANITARY	SINGULAR
MIDNIGHT	OBEDIENT	PERSUADE	RAINCOAT	SAPPHIRE	SLIGHTLY
MIDPOINT	OBLIVION	PETULANT	RAINDROP	SATURATE	SLIPPERY
MINIMIZE	OBSOLETE	PHARMACY	RAINFALL	SAWTOOTH	SNOWBALL
MINSTREL	OBSTACLE	PHEASANT	RATIONAL	SCABBARD	SNOWSHOE
MISCHIEF	OCCASION	PHONETIC	RAVENOUS	SCAFFOLD	SOCIABLE
MISPLACE	ODOMETER	PHYSICAL	REACTION	SCENARIO	SOFTBALL
MISSPELL	OFFICIAL	PINAFORE	REAPPEAR	SCHEDULE	SOFTWARE
MOCCASIN	OFFSHORE	PINNACLE	REASSIGN	SCHOONER	SOLIDIFY
MODERATE	OMISSION	PINPOINT	REASSURE	SCISSORS	SOLITARY
MODESTLY	OPERATOR	PIONEERS	RECENTLY	SCORPION	SOLITUDE
MOISTURE	OPPONENT	PIPELINE	RECKLESS	SCRABBLE	SOLSTICE
MOLASSES	OPTIMISM	PLATFORM	RECREATE	SCRAMBLE	SOLUTION
MOLECULE	ORDINARY	PLATINUM	REDEFINE	SCRIBBLE	SOMBRERO
MOEHILL	ORNAMENT	PLEASANT	REFERRAL	SCRUTINY	SOMEBODY
MONARCHY	OUTBOUND	POPULACE	REGAINED	SCULPTOR	SOMETIME
MONOPOLY	OUTBREAK	PORPOISE	REGARDED	SEABOARD	SONGBOOK
MONOTONE	OUTDOORS	PORRIDGE	REGIONAL	SEACOAST	SORCERER
MONUMENT	OUTFIELD	PORTABLE	REGISTER	SEAHORSE	SOUTHERN
MORTGAGE	OVERCAST	PORTRAIT	REINDEER	SEASHORE	SOUVENIR
MOSQUITO	OVERCOAT	POSITION	RELATION	SEASONAL	SPACIOUS

SPECIFIC	THIRTEEN	WARDROBE	ARMSTRONG	CHILDHOOD	EDUCATION
SPECTRUM	THURSDAY	WARRANTY	ARROGANCE	CHOCOLATE	EMERGENCY
SPLENDID	TOBOGGAN	WHATEVER	ARROWHEAD	CLASSROOM	EMOTIONAL
SPLENDOR	TOGETHER	WHEREVER	ARTICHOKE	CLEARANCE	ENCHANTED
SPOONFUL	TOLERANT	WINDFALL	ASPARAGUS	CLOCKWISE	ENCOUNTER
SPORADIC	TOLERATE	WINDMILL	ASSISTANT	COMMITTEE	ENDURANCE
SPRINKLE	TOMORROW	WIRELESS	ASTROLOGY	COMMUNITY	ENTERTAIN
SQUADRON	TORTILLA	WITHDRAW	ASTRONAUT	COMPANION	EQUIPMENT
SQUIRREL	TRANQUIL	WORKLOAD	ASTRONOMY	COMPETENT	ESTABLISH
STALLION	TRANSFER	WORKSHOP	ATTENTION	COMPONENT	ESTIMATES
STAMPEDE	TRANSMIT	WRANGLER	AUTHORITY	CONCIERGE	ETIQUETTE
STANDARD	TRAVERSE	YOURSELF	AUTOGRAPH	CONDITION	EVAPORATE
STANDOFF	TREASURE	YOUTHFUL	AUTOMATIC	CONFIDENT	EVERGREEN
STRAIGHT	TRESPASS	ZUCCHINI	AVAILABLE	CONFUSING	EVERYBODY
STRAINER	TRIANGLE	ABSURDITY	BACKWARDS	CONNECTED	EXCELLENT
STRATEGY	TRICYCLE	ACCORDION	BADMINTON	CONSCIOUS	EXCLUSIVE
STRENGTH	TRILLION	ACROBATIC	BALLERINA	CONSONANT	EXECUTIVE
STRUGGLE	TROMBONE	ADMIRABLE	BANDSTAND	CONSTRUCT	EXHAUSTED
STUBBORN	TROPICAL	ADMISSION	BAROMETER	CONTAINER	EXISTENCE
STUDIOUS	TURNOVER	ADVANTAGE	BINOCULAR	CONTENDER	EXPANSION
STUNNING	TWEEZERS	ADVENTURE	BIOGRAPHY	CONTINENT	EXPENSIVE
SUBMERGE	ULTIMATE	ADVERSARY	BIOSPHERE	COROLLARY	EXPERTISE
SUBTRACT	UMBRELLA	ADVERTISE	BLEACHERS	CRANBERRY	EXTENSION
SUBURBAN	UNBROKEN	AEROSPACE	BLINDFOLD	CRITICISM	FANTASTIC
SUCCINCT	UNCOMMON	AESTHETIC	BLUEBERRY	CROCODILE	FINGERTIP
SUITABLE	UNDERCUT	AFFIDAVIT	BLUEGRASS	DANDELION	FLOWERPOT
SUITCASE	UNDERDOG	AFFILIATE	BLUEPRINT	DANGEROUS	FLUCTUATE
SUNLIGHT	UNDERSEA	AFTERMATH	BOOKSTORE	DEDICATED	FORBIDDEN
SUNSHINE	UNDERWAY	AFTERNOON	BOOMERANG	DEFICIENT	FORESIGHT
SUPERIOR	UNICYCLE	ALABASTER	BOULEVARD	DELICIOUS	FORGETFUL
SURPRISE	UNIVERSE	ALBATROSS	BREAKFAST	DEMOCRACY	FORTUNATE
SURROUND	UNLIKELY	ALGORITHM	BRIEFCASE	DEPARTURE	FOUNTAINS
SUSPENSE	UNSETTLE	ALLIGATOR	BRILLIANT	DESPERATE	FRAMEWORK
SWIMSUIT	UNSTABLE	AMBIGUOUS	BROADCAST	DETECTIVE	FRANCHISE
SYMMETRY	UPCOMING	AMBITIOUS	BULLDOZER	DETERGENT	FREQUENCY
SYMPATHY	VACATION	AMPERSAND	CAFETERIA	DETERMINE	FURNITURE
SYMPHONY	VAGABOND	AMPHIBIAN	CALCULATE	DIAGNOSIS	GATHERING
SYNDROME	VALIDATE	AMPLIFIER	CALIBRATE	DIFFERENT	GENERATOR
TACTICAL	VALUABLE	AMPLITUDE	CAPACITOR	DIFFICULT	GENTLEMAN
TANGIBLE	VANGUARD	ANCESTRAL	CAPTIVATE	DIGNIFIED	GEOMETRIC
TAPESTRY	VARIABLE	ANCHOVIES	CARDBOARD	DIMENSION	GOLDENROD
TEASPOON	VARIANCE	ANONYMOUS	CARPENTER	DIRECTION	GRATITUDE
TEENAGER	VELOCITY	ANTHOLOGY	CARTWHEEL	DISAPPEAR	GREATBEND
TELECAST	VERTEBRA	ANTIQUITY	CASSEROLE	DISCOVERY	GREYHOUND
TELEGRAM	VERTICAL	APARTMENT	CENTIPEDE	DISPENSER	GROCERIES
TENDENCY	VICINITY	APOLOGIZE	CERTITUDE	DOCTORATE	GUIDELINE
TERMINAL	VIGNETTE	APPETIZER	CHALLENGE	DORMITORY	GYMNASIUM
TERRIBLE	VINEYARD	APPLIANCE	CHAMPAGNE	DUPLICATE	GYMNASTIC
TERRIFIC	VIRTUOSO	AQUEDUCTS	CHARACTER	EARTHWORM	HAILSTORM
TEXTBOOK	VITALITY	ARBITRARY	CHECKLIST	ECCENTRIC	HAMBURGER
THEMATIC	WAITRESS	ARGONAUTS	CHEMISTRY	EDITORIAL	HANDSHAKE

HAPPENING	LEISURELY	NUTRITION	PRIMITIVE	RESISTANT	SOLITAIRE
HAPPINESS	LIBRARIAN	OBEDIENCE	PRINCETON	RESONANCE	SOMETHING
HARMONICA	LIFESTYLE	OBLIGATED	PRINCIPAL	RESPECTED	SOURDOUGH
HEADLIGHT	LIGHTNING	OBSESSION	PRIVILEGE	RESTRAINT	SOVEREIGN
HEADPHONE	LIMELIGHT	OCCUPANCY	PROCESSED	RIVERVIEW	SPACESHIP
HEARTBEAT	LIMESTONE	OLFACTORY	PROFESSOR	ROADBLOCK	SPAGHETTI
HIBERNATE	LIMOUSINE	OPTOMETRY	PROJECTOR	SADDLEBAG	SPEARMINT
HIERARCHY	LIVESTOCK	ORCHESTRA	PROMENADE	SAFEGUARD	SPECTATOR
HIGHLANDS	LOCKSMITH	OVERBOARD	PROMOTION	SAGEBRUSH	SPOKESMAN
HIGHLIGHT	LONGEVITY	OVERWHELM	PROOFREAD	SANDPAPER	SPOTLIGHT
HISTORIAN	LUMINANCE	PALLADIUM	PROVISION	SATELLITE	SPRINKLER
HONEYCOMB	LUXURIOUS	PANTOMIME	PROXIMITY	SATISFIES	STABILITY
HONEYMOON	MACHINERY	PAPERWORK	PUBLISHER	SATURATED	STAINLESS
HOROSCOPE	MAGNITUDE	PARACHUTE	PUPPETEER	SAXOPHONE	STALEMATE
HORSEBACK	MANHATTAN	PARAGRAPH	QUADRUPLE	SCAPEGOAT	STARLIGHT
HORSESHOE	MARGARINE	PARAMETER	QUALIFIED	SCARECROW	STATEMENT
HOURLASS	MARKETING	PARCHMENT	QUALITIES	SCORECARD	STEAMBOAT
HOUSEHOLD	MARMALADE	PARTITION	QUARTERLY	SCRIBBLER	STOCKINGS
HOUSEWORK	MARVELOUS	PARTRIDGE	QUICKSAND	SCRIMMAGE	STOPWATCH
HURRICANE	MCPHERSON	PASSENGER	QUOTATION	SCULPTURE	STOREROOM
HYDRAULIC	MEANWHILE	PATCHWORK	RACETRACK	SECESSION	STRATEGIC
HYPNOTIZE	MEDALLION	PEACETIME	RASPBERRY	SECLUSION	STREETCAR
IDENTICAL	MENAGERIE	PENINSULA	REARRANGE	SECRETARY	STRUCTURE
IMAGINARY	MESSANGER	PEPPERONI	REASONING	SECTIONAL	STYROFOAM
IMMEDIATE	METEORITE	PERENNIAL	RECEPTION	SEEDLINGS	SUBMARINE
IMPATIENT	MEZZANINE	PERISCOPE	RECIPIENT	SEEMINGLY	SUBSCRIBE
IMPLEMENT	MICROFILM	PERMANENT	RECOGNIZE	SELECTION	SUBSTANCE
IMPORTANT	MICROWAVE	PERPETUAL	RECOMMEND	SEMANTICS	SUNFLOWER
IMPROMPTU	MIDSUMMER	PERSEVERE	RECONCILE	SEMICOLON	SUPERVISE
IMPROVISE	MILLIPEDE	PETROLEUM	RECORDING	SENSATION	SURRENDER
IMPULSIVE	MILLSTONE	PHENOMENA	RECTANGLE	SENSITIVE	SYMBOLISM
INAUGURAL	MINCEMEAT	PHYSICIAN	RECYCLING	SENTIMENT	TANGERINE
INCENTIVE	MINIATURE	PINEAPPLE	REDUNDANT	SERIOUSLY	TECHNICAL
INCLUSION	MISTLETOE	PISTACHIO	REFERENCE	SHEEPSKIN	TECHNIQUE
INCORRECT	MODERNIZE	PLENTIFUL	REFLECTOR	SHELLFISH	TELEGRAPH
INFLUENCE	MONOLOGUE	PLUTONIUM	REGARDING	SHIPBOARD	TELEPHONE
INGENIOUS	MOONLIGHT	PNEUMATIC	REGULATOR	SHIPSHAPE	TELESCOPE
INGENUITY	MULTIPLEX	POLLUTION	REHEARSAL	SHIPWRECK	TEMPORARY
INSERTION	MUNICIPAL	POLYESTER	REINFORCE	SIDEBURNS	TENTATIVE
INSURANCE	MYTHOLOGY	PORCELAIN	REITERATE	SIGNATURE	TERRITORY
INTEGRITY	NECESSARY	PORCUPINE	REJECTION	SIMILARLY	TESTIMONY
INVENTIVE	NECESSITY	POTASSIUM	RELEVANCE	SIMULATED	THEREFORE
INVISIBLE	NEGOTIATE	POTENTIAL	RELUCTANT	SINCERELY	THESAURUS
IRREGULAR	NEWSPAPER	POTPOURRI	REMOVABLE	SITUATION	THRESHOLD
JELLYFISH	NIGHTFALL	PRECEDENT	RENEWABLE	SKETCHPAD	TIMETABLE
KNOWLEDGE	NOCTURNAL	PREEMPTED	REPRESENT	SLAPSTICK	TOOTHPICK
LABYRINTH	NONLINEAR	PRESENTLY	REQUISITE	SNOWFLAKE	TOUCHDOWN
LANDOWNER	NORTHEAST	PRESIDENT	RESEMBLES	SOCIALIZE	TRADEMARK
LANDSCAPE	NORTHWEST	PRETENDER	RESERVOIR	SOCIOLOGY	TRADITION
LAZYBONES	NOSTALGIA	PREVALENT	RESIDENCE	SOLICITOR	TRANSFORM
LEGENDARY	NUMERATOR	PRIMARILY	RESILIENT	SOLILOQUY	TRANSLATE

TRANSPORT	WALLPAPER				
TURQUOISE	WAREHOUSE				
UNANIMOUS	WEDNESDAY				
UNCERTAIN	WHIRLPOOL				
UNDECIDED	WHOLESALE				
UNDERLINE	WHOLESOME				
UNDERPASS	WONDERFUL				
UNIVERSAL	WORKHORSE				
UNWILLING	WORLDWIDE				
UTILITIES	WRESTLING				
VALENTINE	YARDSTICK				
VARIATION	YESTERDAY				
VEGETABLE	YOUNGSTER				
VENERABLE					
VENTILATE					
VERSATILE					
VESTIBULE					
VICTORIAN					
VIDEOTAPE					
VOLUNTARY					
VOLUNTEER					

TRD-200303230
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 27, 2003

Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: May 22, 2003

◆ ◆ ◆
Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, June 18, 2003, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building,
300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and HOA Inc. dba Homes of America to hear alleged violations of Sections 7(j)(3) and 19(c) of the Act and Sections 80.204(b)(3) and 80.123(b)(3) of the Rules by selling a new manufactured home without surrendering the original Manufacturer's Certificate of Origin and failing to make available for review by the Department the written notice given to the consumer of the two year limitation for filing a claim against the bond. SOAH 332-03-3218. Department MHD2002001384-W.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489,
(512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200303195

◆ ◆ ◆
North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the October 18, 2002 issue of the Texas Register (27 TexReg 9823). The selected consultant will perform the 2003 Air Quality Awareness Campaign for the Dallas-Fort Worth Region.

The consultant selected for this project is the North Texas Commission, 8445 Freeport Parkway, Irving, Texas. The maximum amount of this contract is \$900,000. Work on this project began March 1, 2003.

Issued in Arlington, Texas on May 22, 2003.

TRD-200303186
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 22, 2003

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 22, 2003, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of VarTec Telecom, Inc., d/b/a VarTec Energy for Retail Electric Provider (REP) Certification, Docket Number 27854 before the Public Utility Commission of Texas.

Applicant's requested service area is the geographic area of the Electric Reliability Council of Texas (ERCOT).

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 13, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27854.

TRD-200303252
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 27, 2003



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 22, 2003, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of ExTex Retail Services Company, LLC for Retail Electric Provider (REP) Certification, Docket Number 27856 before the Public Utility Commission of Texas.

Applicant's requested service area is defined by customers, including the limitation of serving only customers for whom it has filed said affidavits with the commission.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 13, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27856.

TRD-200303253
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 27, 2003



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 21, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Universal Telephone Exchange, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 27842 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas comprising the Dallas Local Access and Transport Area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 11, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27842.

TRD-200303226
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2003



Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on May 21, 2003, for waiver of denial by North American Numbering Plan Administrator (NANPA) of applicant's request for NXX codes.

Docket Title and Number: Application of United Telephone Company of Texas, Inc. d/b/a Sprint for Waiver of Denial by NANPA of NXX Code Request in the Hamilton Rate Center. Docket Number 27847.

The Application: A customer of Sprint has requested that Sprint provide a block of 3,000 consecutive numbers in the Hamilton rate center. Sprint stated that its existing telephone resources cannot satisfy its customer's specific need for both the specific volume of numbers as well as for a block of 3,000 consecutive numbers. The NANPA denied Sprint's request based on practices designed to prohibit acquisition of unneeded numbering resources. Sprint seeks an exception to the application of NXX assignment guidelines. Sprint asks that the commission waive the NANPA's denial of Sprint's NXX assignment request and direct the NANPA to provide Sprint the thousands-blocks in the Hamilton rate center as requested.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 13, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 27847.

TRD-200303251
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 27, 2003



Notice of Filing to Discontinue Services Pursuant to P.U.C. Substantive Rule 26.208

Notice is given to the public of Livingston Telephone Company, Incorporated's application filed with the Public Utility Commission of Texas (commission) on May 1, 2003 to discontinue services.

Docket Title and Number: Application of Livingston Telephone Company, Incorporated (Livingston) for Administrative Revisions to Section 8, Pages 8 and 9 of the Customer Services Tariff Pursuant to P.U.C. Substantive Rule 26.208. Docket Number 27729.

Livingston has filed an application to withdraw Joint User Service from its Customer Services Tariff. Joint User Service has become obsolete because no existing customers have requested joint user billing arrangements from Livingston since 1999; therefore, Livingston proposes to withdraw this service. There are no grandfathering issues.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by July 7, 2003, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 27729.

TRD-200303254
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 27, 2003



Public Notice of Amendment to Interconnection Agreement

On May 20, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and MCImetro Access Transmission Services, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27836. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27836. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 20, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27836.

TRD-200303191
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2003



Public Notice of Amendment to Interconnection Agreement

On May 20, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Habla Comunicaciones, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27839. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27839. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 23, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:

- a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27839.

TRD-200303193
 Rhonda G. Dempsey
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: May 22, 2003



Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on May 30, 2003.

Docket Title and Number. Sugar Land Telephone Company Application for Approval of LRIC Study for Implementation of New Optional Nonrecurring Service Offering for Sugar Land Complex Service Customers, Installation Expedite Charge pursuant to P.U.C. Subst. R. 26.214, Docket Number 27833.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 27833. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200303188
 Rhonda G. Dempsey
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: May 22, 2003



Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on May 30, 2003.

Docket Title and Number. Texas Alltel, Inc. Application for Approval of LRIC Study for Implementation of New Optional Nonrecurring Service Offering for Texas Alltel, Inc. Complex Service Customers, Installation Expedite Charge pursuant to P.U.C. Subst. R. §26.214, Docket Number 27834.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 27834. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200303189
 Rhonda G. Dempsey
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: May 22, 2003



Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214 on May 23, 2003. The Applicant will file the LRIC study on or about June 2, 2003.

Docket Title and Number. Valor Telecommunications of Texas, LP Application for Approval of LRIC Study for State-Wide Direct Inward-Outward Dialing Service (DIOD) Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 27862.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 27862. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200303257
 Rhonda G. Dempsey
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: May 27, 2003



Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214 on May 23, 2003. The Applicant will file the LRIC study on or about June 2, 2003.

Docket Title and Number. Valor Telecommunications of Texas, LP Application for Approval of LRIC Study for Hunt Service (Circular, Regular and Sequential) Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 27863.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 27863. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200303258
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 27, 2003



Public Notice of Interconnection Agreement

On May 20, 2003, TXU Communications Telephone Company doing business as TXU Communications and Capital Telecommunications, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27835. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27835. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 20, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or

- c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27835.

TRD-200303190
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2003



Public Notice of Interconnection Agreement

On May 21, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Budget Phone, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27838. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27838. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 23, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or

- c) is not consistent with other requirements of state law; and
3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27838.

TRD-200303192
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2003



Public Notice of Interconnection Agreement

On May 21, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Advanced Airsystems Technology, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27840. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 27840. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 23, 2003, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or

- c) is not consistent with other requirements of state law; and
3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27840.

TRD-200303194
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2003



Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

<http://www.dot.state.tx.us>

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200303185
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 22, 2003



Request for Proposal - Computer Dispatching/Scheduling System

Transit Management of Tyler (TMT) administers the Texas Department of Transportation Rural Public Transportation, Urban Public Transit for the City of Tyler, Texas. TMT subcontracts these fixed route services for the City of Tyler. TMT provides general public transportation, job access, and transportation service for the elderly. The City of Tyler, Texas Public Transit system is issuing a Request for Proposal (RFP) for a Computer Dispatching/Scheduling system for its fleet of 12 Vehicles. System needs to be web based for use at multiple dispatching locations. System will be used in urban and rural settings in East Texas.

Contact Tyler Transit at 903-533-8057 to receive a copy of the RFP.

Email: Munk@TylerTexas.com
TRD-200303277
Richard D. Monroe
General Counsel
Texas Department of Transportation
Filed: May 28, 2003



How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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