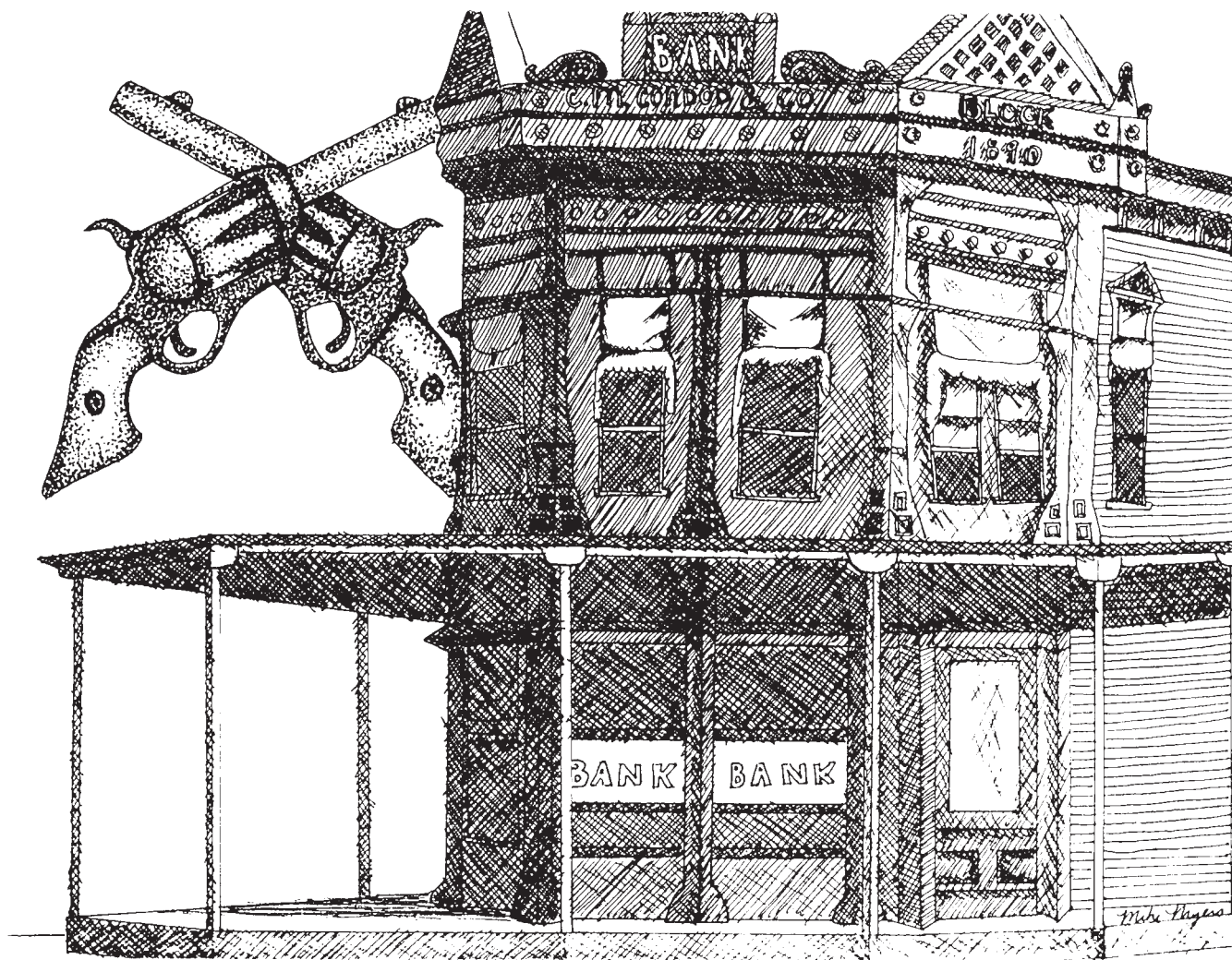

TEXAS REGISTER

Vol. 24 No. 17 April 23, 1999

Pages 3153-3263



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12th Grade

Rockwall High School

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***Texas Register*, ISSN 0362-4781**, is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$150, six month \$100. First Class mail subscriptions are available at a cost of \$250 per year. Single copies of most issues for the current year are available at \$10 per copy in printed format.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage is paid at Austin, Texas.

POSTMASTER: Send address changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
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OFFICE OF 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 #JC-0031. (RQ-1177). Request from Mr. John Branson, Fisher County, Auditor, P.O. Box 126, Roby, Texas 79543, regarding whether section 113.022 of the Local Government Code, which requires a county officer who receives funds to deposit the funds with the county treasurer within certain time limits, applies to court fees collected by a district clerk.

Summary. Section 113.022 of the Local Government Code applies to funds collected by a district clerk that "belong to the county," including all fees for "official services" performed by the district clerk. An express statutory directive regarding the deposit of a particular fee will prevail over more general statutes regarding the disposition of monies.

Opinion #JC-0032. (RQ-1207). Request from the Honorable Sonya Letson, Potter County, Attorney, 500 South Fillmore, Room 303, Amarillo, Texas 79101, regarding whether chapter 2258 of the Government Code, which requires payment of prevailing wages in connection with public work contracts, applies to a project of a development corporation created under article 5190.6 of the Revised Civil Statutes.

Summary. Chapter 2258 of the Government Code applies to a worker employed on a public work "by or on behalf of the state or a political subdivision of the state." Tex. Gov't Code Ann. 2258.021(a) (Vernon 1999). Because a development corporation created under the Development Corporation Act of 1979 is not a political subdivision for purposes of the laws of this state, see Tex. Rev. Civ. Stat. Ann. art. 5190.6, 22 (Vernon 1987), chapter 2258 does not apply to a worker employed by or on behalf of a development corporation. Chapter 2258 will apply to a worker on a project undertaken by a development corporation only if the development corporation undertakes the project on behalf of the state or a political subdivision of the state. In order for the project to be undertaken on behalf of the state or a political subdivision, the state or political subdivision must be a party to the construction contract.

TRD-9902185
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 14, 1999



EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Subchapter B. Placement Planning

37 TAC §85.29

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

Texas Youth Commission (TYC) adopts on an emergency basis the repeal of §85.29, concerning program completion and movement. All references to sentenced offenders in the repealed section have been simultaneously adopted in a new section, (GAP) §85.33 Program Completion and Movement of Sentenced Offenders.

An identical repeal has been proposed and the rule is available for public review.

This repeal is adopted on an emergency basis to maintain effectiveness of criteria and procedure for movement of youth other than sentenced offenders while simultaneously adopting by emergency a new rule effecting movement of sentenced offenders. Adoption on an emergency basis is necessary to clarify the agency's intent so that no youth is released from a residential placement prior to completion of specified criteria.

The repeal is adopted on an emergency basis under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

§85.29. *Program Completion and Movement.*

Filed with the Office of the Secretary of State, on April 9, 1999.

TRD-9902126

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: April 9, 1999

Expiration date: August 7, 1999

For further information, please call: (512) 424-6244



Texas Youth Commission (TYC) adopts on an emergency basis new §85.29, concerning program completion and movement of other than sentenced offenders. All references to sentenced offenders in the repealed section have been simultaneously adopted in a new section, (GAP) §85.33 Program Completion and Movement of Sentenced Offenders. For youth committed to TYC, this new rule will establish criteria and procedure for the completion of a TYC treatment program and corresponding eligibility for transition to a program of less restriction, and/or release home or to a home substitute. Movement criteria are based on degree of severity of the offense. When criteria have been met, youth may earn parole status. Certain exceptions may be made for hardship cases, to control population, and for certain mentally ill and mentally retarded youth.

An identical new rule has been proposed and the rule is available for public review.

This new section is adopted on an emergency basis to maintain effectiveness of criteria and procedure for movement of youth other than sentenced offenders while simultaneously adopting by emergency a new rule effecting movement of sentenced offenders. Adoption on an emergency basis is necessary to clarify the agency's intent so that no youth is released from a residential placement prior to completion of specified criteria.

The new section is adopted on an emergency basis under the Human Resources Code, §61.075, concerning determination of treatment, which provides the Texas Youth Commission authority to discharge the child from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

The adopted rule implements the Human Resource Code, §61.034.

§85.29. Program Completion and Movement of other than Sentenced Offenders.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby staff may determine when a youth has completed a program, is eligible to be moved to another program, released home, placed on parole status.

(b) Applicability.

(1) This rule does not address all types of disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(2) This rule does not apply to sentenced offenders. See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders and §85.37 of this title (relating to Sentenced Offender Disposition).

(3) This rule does not apply to movement strictly for treatment reasons.

(c) Explanation of Terms Used.

(1) Program completion criteria - the criteria which a youth must meet while in the current program in order to move to an equal or lesser level of restriction.

(2) Disciplinary movement - a movement to equal or more restriction as a disciplinary consequence if found during appropriate due process. A disciplinary movement may or may not be accompanied by a new minimum length of stay requirement. There are several types of disciplinary movement consequences. These movements are subject to policies in this chapter and in Chapter 95, Subchapter A of this title (relating to Disciplinary Practices). For restriction levels see (GAP) §85.27 of this title (relating to Program Restriction Levels).

(3) Administrative transfer - a lateral movement, i.e., a movement from one program to another program within the same restriction level for an administrative purpose. Purposes may include but are not limited to proximity to a youth's home, specific treatment needed becomes available, appropriateness of placement due to education needs, age, etc.

(4) Transition movement - also referred to as "a transition", any movement from one assigned program site to another as a result of a youth's progress toward meeting the program completion criteria of his/her program. Transition is always to placement of equal or less restriction than that of the current placement. Transition is not a type of placement or a status.

(5) Parole Status - a status assigned to a youth when criteria have been met. The status assures that a youth, having parole status, shall not be moved into a placement of high restriction without a level I hearing.

(d) Program Completion Processes.

(1) Program staff will explain completion criteria to every youth during orientation to each placement.

(2) Prior to a transition movement, a youth may request and in doing so will be granted a level II hearing.

(3) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(4) Progress toward successful completion of criteria shall be evaluated at specific regular intervals.

(A) If, at the review, it is determined the youth has completed criteria required for transition, movement is considered. A transition placement is always to a placement of equal or less restriction than the youth's current placement.

(B) If, at the review, it is determined the youth has not completed criteria required for a transition or release movement, the youth may be continued in the placement.

(5) TYC program staff where the youth is assigned shall determine when program completion criteria have been met.

(e) Program Completion Criteria and Movement.

(1) Youth Whose Classifying Offense is Type A Violent Offender.

(A) Criteria. A type A violent offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met.

(i) no major rule violations within 90 days prior to the transition/release review; and

(ii) completion of the minimum length of stay (MLS); and

(iii) completion of phase 4 ; and

(iv) completion of ICP objective requirements:

(I) completion of required ICP objectives for transition to medium restriction except objectives which cannot be completed in the current placement but which may be completed in a medium restriction placement: or

(II) completion of all ICP objectives for release on parole to home level restriction.

(B) Procedure. The release of a qualified youth from a high restriction facility either to medium restriction or home level restriction on parole may occur as follows.

(i) Staff must develop a Release Plan adequate to ensure public safety and positive reintegration, which includes:

(I) a current Psychological Report (conducted within the previous six months) that includes a risk assessment;

(II) ICP: Release/Review Summary - treatment summary and community confirmation that specifically addresses the identified risk factors;

(III) home evaluation if appropriate; and

(IV) other supporting documents.

(ii) supervising program administrator must approve packet;

(iii) Special Services Committee must conduct an exit interview with the youth to determine whether the youth meets criteria, and must review and approve the packet, and recommend the release;

(iv) the superintendent/quality assurance administrator must approve and recommend the release and forward packet to the juvenile corrections department in central office;

(v) the assistant deputy executive director for rehabilitation services will review the release packet for quality assurance of information presented and adequacy of the release plan;

(vi) the assistant deputy executive director for juvenile corrections (final release authority) will approve the release and confirm release to the facility administrator.

(vii) Executive director may choose to review and approve/ disapprove any movement, in which case, he is the final release authority.

(2) Youth Whose Classifying Offense is Other Than Type A Violent Offender.

(A) Criteria. A youth other than a type A violent offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met.

(i) no major rule violations within 30 days prior to the transition/release review.

(ii) minimum length of stay requirements:

(I) completion except three months for transition to medium restriction; or

(II) completion of the entire MLS for release on parole; and

(iii) completion of phase requirements:

(I) phase 3 of resocialization goals for transition to medium restriction (for youth classified on or after January 1, 1996), (not applicable to youth in contract placements); and

(II) phase 4 of resocialization goals for release to minimum or home level restriction (for youth classified on or after January 1, 1996), (not applicable to youth in contract placements); and

(iv) completion of required Individual Case Plan (ICP) objectives.

(B) Procedure. The transition/release of a qualified youth either to medium restriction or home level restriction on parole may occur as follows.

(i) Staff must develop a Release Plan adequate to ensure public safety and positive reintegration, which includes:

(I) ICP: Release/Review Summary - treatment summary and community confirmation that specifically addresses the identified risk factors; and

(II) home evaluation if appropriate; and

(III) other supporting documents.

(ii) supervising program administrator must approve transition/release;

(iii) Special Services Committee treatment team must conduct an exit interview with the youth to determine whether the youth meets criteria, and must approve the transition/release;

(iv) the superintendent/quality assurance administrator (final release authority) must approve the release.

(3) Program Completion Criteria: Returned to Residential Placement. A youth returned to any residential program via a TYC level I or II hearing:

(A) with a classification MLS, must meet initial criteria for the classification; or

(B) with no classification MLS, must meet the original criteria for the classification with one exception. Criterion for completion of the resocialization phases (specified in paragraphs (1) and (2) of this subsection) or program goals in programs not providing TYC resocialization, will apply; however, the youth shall be reassessed for degree of regression and shall begin at the phase (or goal) indicated by the reassessment.

(f) Parole Status. Parole status shall be earned by the youth when he is deemed to have completed residential program completion criteria, subsection (e) of this section. When a youth has earned parole status and transition to minimum or home restriction level placement is pending, he attains parole status in the current program prior to the transition, unless he is in a high restriction program, in which case, he attains parole status on leaving the facility.

(g) Movement Without Program Completion.

(1) Administrative Transfer Movements. Administrative transfer movements may be made among programs of equal restrictions without a due process hearing. An administrative movement

shall not be made in lieu of a movement for which a due process hearing is mandatory.

(2) Exceptions in Hardship Cases. Youth may be placed on parole status at home without meeting completion criteria in hardship cases on the recommendation by parole officer and approval by the deputy executive director.

(3) Exceptions to Control Population. TYC recognizes that optimum program integrity, efficiency, and safety is possible only if programs are not overpopulated. When overpopulation occurs in any institution, certain remedial actions are taken by the facility.

(A) Invoking Early Release Procedures.

(i) When population in any TYC institution reaches three percent (3%) above general population budgeted capacity (excludes youth in specialized treatment), the superintendent may declare an overpopulation condition and may invoke early release criteria.

(ii) When population in any TYC institution reaches five percent (5%) above general population budgeted capacity, the superintendent shall declare an overpopulation condition and shall invoke early release criteria.

(B) Early Release Criteria. Youth in specialized treatment programs and sentenced offenders are not eligible for early release under these procedures. Those who may be released early are general population youth who:

(i) have completed the minimum length on stay, and

(ii) have completed phase three of resocialization.

(C) Of youth who meet criteria, release should begin with those having mastered the most objectives towards completion of phase four (4).

(D) Within 24 hours of making the decision to implement the early release policy for population control policy on a campus, the superintendent will notify the appropriate juvenile corrections director.

(E) The deputy executive director may cancel or revise any population control in effect or may implement any other youth movement option when necessary to control population and/or manage available funds concerning youth in residential placement.

(4) Exceptions for Mentally Ill and Mentally Retarded Youth. Certain youth excluding sentenced offenders who have completed their minimum lengths of stay and are unable to derive further benefit from the agency's rehabilitation programs because of mental illness or mental retardation, shall be discharged following application for appropriate services to address their mental illness or mental retardation. See (GAP) §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(h) Notification. Parents or guardians will be notified of all movements.

Filed with the Office of the Secretary of State, on April 9, 1999.

TRD-9902127

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: April 9, 1999

Expiration date: August 7, 1999

For further information, please call: (512) 424-6244

◆ ◆ ◆

37 TAC §85.33

Texas Youth Commission (TYC) adopts on an emergency basis new §85.33, concerning Program Completion and Movement of Sentenced Offenders. The new section addresses the treatment of juvenile offenders sentenced to commitment in TYC. Related information that existed in the repealed rule, (GAP) §85.29 of this section (relating to Program Completion and Movement), is being moved and/or revised in this new rule. Included are criteria for transferring youth to the Texas Department of Criminal Justice (TDCJ) when warranted and for retaining youth in TYC when likewise warranted. Criteria are established for youth completion of program requirements and for eligibility to move to a placement of less restriction. Sentenced offenders are placed in high restriction facilities and must serve their minimum periods of confinement in high restriction prior to consideration for movement to less restriction, unless approved by the court. No youth will be considered for movement from high restriction solely on the basis of having completed the minimum period of confinement. The additional criteria require that each youth has demonstrated competence over all resocialization components including cognitive distortions and behavioral patterns that contributed to the offender's committing offense(s). This new rule contains information regarding youth committed under concurrent determinate sentence and indeterminate commitment orders as previously contained in the repealed section (GAP) §85.35 of this title (relating to Special Circumstances; Multiple Commitment Orders).

An identical new rule has been proposed and is available for public review.

This new section is adopted on an emergency basis to provide clarity of agency intent regarding release of sentenced offenders. Any unintended early release of a sentenced offender could result in a safety risk to the general public.

The new section is adopted on an emergency basis under the Human Resources Code, §61.075, concerning determination of treatment, which provides the Texas Youth Commission authority to discharge the child from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

The adopted rule implements the Human Resource Code, §61.034.

§85.33. Program Completion and Movement of Sentenced Offenders.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby staff may determine when a sentenced offender youth has completed a program, is eligible to be moved to another program, released home, placed on parole status, or may be transferred to the Texas Department of Criminal Justice (TDCJ).

(b) Applicability.

(1) This rule does not address all types of disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(2) This rule does not apply to youth committed to TYC on indeterminate commitments. See (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(c) Explanation of Terms Used.

(1) Program completion criteria—See the term explanation in (GAP) §85.29 of this title.

(2) Administrative transfer—See the term explanation in (GAP) §85.29 of this title.

(3) Transition movement—See the term explanation in (GAP) §85.29 of this title.

(4) Parole status—See the term explanation in (GAP) §85.29 of this title.

(5) Category 1 offense—one of the following offenses committed on or after January 1, 1996, for which a youth has been given a determinate sentence: murder, capital murder, attempted capital murder, sexual assault, and aggravated sexual assault.

(6) Category 2 offense—the offenses except category 1 offenses committed on or after January 1, 1996, for which a youth has been given a determinate sentence.

(d) General Restrictions. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, and disciplinary movement of sentenced offenders must be applied differently. Specifically:

(1) Classification. A youth classified at commitment as a sentenced offender shall retain a sentenced offender classification as long as the youth remains under the jurisdiction of TYC as a result of that commitment. See (GAP) §85.23 of this title (relating to Classification).

(2) Initial Placement. On initial placement, all sentenced offenders shall be assigned to high restriction facilities unless the deputy executive director waives such placement for a particular youth.

(e) Program Completion Processes.

(1) Program staff will explain completion criteria to every youth during orientation to each placement.

(2) Prior to a transition movement, a youth may request and in doing so will be granted a level II hearing.

(3) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(4) Progress toward successful completion of criteria shall be evaluated at specific regular intervals.

(A) If, at the review, it is determined the youth has completed criteria required for transition, movement is considered. A transition placement is always to a placement of equal or less restriction than the youth's current placement.

(B) If, at the review, it is determined the youth has not completed criteria required for a transition or release movement, the youth may be continued in the placement or considered for transfer to TDCJ under legal requirements and procedures herein.

(5) TYC program staff where the youth is assigned shall determine when program completion criteria have been met.

(f) Youth sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed on or after January 1, 1996.

(1) General Requirements.

(A) Minimum period of confinement (MPC). The MPC is 10 years for youth sentenced for capital murder; three years for youth sentenced for an aggravated controlled substance felony or a felony of the first degree; two years for a felony of the second

degree; one year for a felony of the third degree; or completion of the sentence, whichever occurs first.

(B) Placement. Sentenced offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless:

(i) transferred to TDCJ earlier in accordance with legal requirements or committing court approval; or

(ii) transitioned or released earlier under provisions in paragraph (2)(A)(iii) of this subsection and with committing court approval.

(C) Parole. Sentenced offenders shall not attain parole status at any time prior to completion of serving the minimum period of confinement unless approved by the committing court.

(D) Administrative transfer. Administrative transfer movements may be made among programs of equal restrictions without a due process hearing. An administrative movement shall not be made in lieu of a movement for which a due process hearing is mandatory.

(E) Jurisdiction termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when his/her sentence is complete except as specified in subparagraph (F) of this paragraph.

(F) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders both commitment orders will be given effect, with the determinate sentence order having precedence. Any movement and transfer options available under the determinate sentence order and determined to be appropriate must occur prior to completion of the determinate sentence. Other exceptions are as follows.

(i) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(ii) Both orders are given effect, i.e., the minimum period of confinement under the determinate sentence and the Minimum Length of Stay (MLS) associated with the indeterminate commitment will run concurrently. If the applicable minimum period of confinement under the determinate sentence is completed before the applicable MLS under the indeterminate commitment, the youth will not be considered for release until the MLS has also been completed.

(iii) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, but the indeterminate commitment order will be given effect until normal discharge criteria are met. Under this rule, the youth may remain under TYC supervision until age 21, regardless of the expiration date of the determinate sentence.

(2) Transition and/or Parole Release on Initial Placement.

(A) Youth Whose Classifying Offense is a Category 1 Offense.

(i) Criteria. A category 1 sentenced offender youth will be eligible for transition/release on parole to a placement of less than high restriction when the following criteria have been met.

(I) no major rule violations within 90 days prior to the transition/release review; and

(II) except as provided in clause (iii) of this subparagraph, completion of the minimum period of confinement; and

(III) completion of phase 4 resocialization goals; and

(IV) completion of ICP objective requirements:
(-a-) completion of required ICP objectives for transition to medium restriction except objectives which cannot be completed in the current placement but which may be completed in a medium restriction placement; or

(-b-) completion of all ICP objectives for release on parole to home level restriction.

(ii) Procedure. The release of a qualified youth from a high restriction facility either to medium restriction or home level restriction on parole may occur as follows.

(I) Staff must develop a Release Plan adequate to ensure public safety and positive reintegration, which includes:

(-a-) a current Psychological Report (conducted within the previous six months) that includes a risk assessment;

(-b-) ICP: Release/Review Summary - treatment summary and community confirmation that specifically addresses the identified risk factors;

(-c-) home evaluation if appropriate; and

(-d-) other supporting documents.

(II) supervising program administrator must approve packet;

(III) Special Services Committee must conduct an exit interview with the youth to determine whether the youth meets criteria, and must review and approve the packet, and recommend the release;

(IV) the superintendent/quality assurance administrator must approve and recommend the release and forward packet to the juvenile corrections department in central office;

(V) the assistant deputy executive director for rehabilitation services will review the release packet for quality assurance of information presented and adequacy of the release plan;

(VI) the assistant deputy executive director for juvenile corrections (final release authority) will approve the release and confirm release to the facility administrator.

(VII) Executive director may choose to review and approve/disapprove any movement, in which case, he is the final release authority.

(iii) Exceptions for Youth Whose Classifying Offense Is Capital Murder. A youth sentenced for capital murder may be considered for transition/release prior to completion of the minimum period of confinement when the following requirements have been met.

(I) Criteria. Criteria in paragraph (2)(A)(i) of this subsection apply with one exception. Youth has completed at least three years of the minimum period of confinement.

(II) Procedure. Procedures for transition/release from a high restriction facility in subparagraph (A)(ii) of this paragraph apply with the following additional requirements.

(-a-) the superintendent/quality assurance administrator must approve release and submit to central office a release packet and recommendation that an early release hearing be requested;

(-b-) the executive director (final TYC approval authority) must approve the release request and requesting a hearing by the committing juvenile court for early release;

(-c-) the facility administrator must request a hearing by the court; and

(-d-) the court (final release authority) must approve the early transition/release.

(B) Youth Whose Classifying Offense is a Category 2 Offense.

(i) Criteria. A category 2 sentenced offender youth will be eligible for transition/release on parole to a placement of less than high restriction when the following criteria have been met:

(I) no major rule violations within 90 days prior to the transition/release review; and

(II) completion of the minimum period of confinement; and

(III) completion of phase requirements:

(-a-) phase 3 resocialization goals for transition to medium restriction; or

(-b-) phase 4 resocialization goals for release on parole to minimum or home level restriction; and

(IV) completion of ICP objective requirements:

(-a-) completion of required ICP objectives for transition to medium restriction except objectives which cannot be completed in the current placement but which may be completed in a medium restriction placement: or

(-b-) completion of all ICP objectives for release on parole to home level restriction.

(ii) Procedure. The release of a qualified youth from a high restriction facility either to medium restriction or home level restriction on parole may occur as follows.

(I) Staff must develop a Release Plan adequate to ensure public safety and positive reintegration, which includes:

(-a-) a current Psychological Report (conducted within the previous six months) that includes a risk assessment;

(-b-) ICP: Release/Review Summary - treatment summary and community confirmation that specifically addresses the identified risk factors;

(-c-) home evaluation if appropriate; and

(-d-) other supporting documents.

(II) supervising program administrator must approve packet;

(III) Special Services Committee must conduct an exit interview with the youth to determine whether the youth meets criteria, and must review and approve the packet, and recommend the release;

(IV) the superintendent/quality assurance administrator (final release authority) must approve the release.

(C) Transition and Release Following Disciplinary Return to Residential Placement.

(i) Following the youth's completion of the minimum period of confinement and release on parole, a sentenced of-

fender is subject to TDCJ transfer rules and TYC policies where specifically addressed, but is otherwise governed by rules for the classification he would have received if not a sentenced offender.

(ii) Should a youth be returned to high or medium restriction placement via a level I or II disciplinary hearing, the youth's eligibility for release on parole or transition from that placement, is that stated in (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(iii) Staff should be aware that rules in subsection (f)(4) of this section apply. Specifically, certain sentenced offenders will transfer to TDCJ, Pardons and Parole rather than be released.

(3) Transfer From TYC High Restriction To TDCJ, Institution. Transfer from a high restriction facility to the Texas Department of Criminal Justice, Institutional Division (TDCJ, ID) may occur as follows.

(A) Criteria. A transfer shall occur (court approval not required) for a youth at age 21 who:

(i) was sentenced for capital murder; and

(ii) has not completed the minimum period of confinement applicable to the youth's classifying offense (10 years) or the sentence if less than 10 years.

(B) Criteria. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for a youth whose parole has been revoked and the following criteria have been met.

(i) youth is at least age 16; and

(ii) youth's parole was revoked for:

(I) felony, Class A misdemeanor, or a high risk offense; or

(II) any other violation which resulted in placement in an intermediate sanction program at which the youth has failed to progress; and

(iii) youth has not completed his/her sentence; and

(iv) youth's conduct indicates that the welfare of the community require the transfer.

(C) Criteria. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for any other youth if the following criteria have been met:

(i) youth is at least age 16; and

(ii) youth has spent at least six months in a high restriction facility; and

(iii) youth has not completed his/her sentence; and

(iv) has met at least one of the following behavior criteria:

(I) youth has committed a felony or Class A misdemeanor; or

(II) youth persistently has committed major rule violations (on three or more occasions); or

(III) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(IV) youth has demonstrated an inability to progress in his/her resocialization program due to persistent non compliance with treatment objectives; and

(v) alternative interventions have been tried without success (for example: special treatment plans, disciplinary transfer, extended stay); and

(vi) youth's conduct indicates that the welfare of the community requires the transfer; and

(D) Procedures. Procedures for effecting a transfer requiring court approval in accordance with subparagraphs (B) and (C) of this paragraph are as follows.

(i) The staff must prepare a referral packet for recommendation and presentation to Special Services Committee that includes:

(I) a current Psychological Report (conducted within the previous six months) that includes a risk assessment;

(II) Treatment Summary that reviews resocialization progress and alternative interventions tried to manage behavior; and

(III) other supporting documents.

(ii) the supervising program administrator must approve the referral packet;

(iii) Special Services Committee must determine whether the youth meets criteria, and must approve packet and recommend transfer;

(iv) the superintendent/quality assurance administrator must approve and recommend transfer and forward packet to the juvenile corrections department in central office;

(v) the assistant deputy executive director for rehabilitation services will review the referral packet for quality assurance of information presented and eligibility for transfer, and will make recommendation to the deputy executive director;

(vi) the assistant deputy executive director for juvenile corrections will review the referral packet and make a recommendation to the deputy executive director;

(vii) deputy executive director (final TYC approval authority) must approve all early transfers and request a hearing by the committing juvenile court hearing;

(viii) juvenile corrections department will confirm final transfer decision to the superintendent/quality assurance administrator who may request a hearing; and

(ix) the court (final transfer authority) must approve the early transfer.

(4) Transfer From TYC High or Medium Restriction To TDCJ, Pardons and Parole. Transfer from a medium or high restriction facility to the Texas Department of Criminal Justice, Pardons and Paroles (TDCJ, PP), shall occur (court approval not required):

(A) at any time after age 19 that a youth has completed the minimum period of confinement applicable to the youth's classifying offense and TYC releases the youth. Youth must meet conditions for release in accordance with subsection (f)(2) of this section or (GAP) §85.29(e) of this title (relating to Program Completion and Movement of Other than Sentenced Offenders).

(B) at age 21 if youth was sentenced for any offense other than capital murder and has not completed the sentence.

(5) Transfer From TYC Home Parole To TDCJ, Pardons and Parole. Transfer from TYC under supervision (parole at home) to TDCJ, PP, shall occur (court approval not required) at age 21 if the youth has not completed his sentence.

(g) Youth sentenced to commitment in TYC for offenses committed before January 1, 1996.

(1) Movement and Parole. Sentenced offenders who meet program completion criteria for transition or parole shall not be released without proper authorization:

(A) Prior to a sentenced offender's 18th birthday, a youth may be transitioned to an appropriate placement if approved by the superintendent or quality assurance administrator. The placement may be to any location other than home or home substitute.

(B) When a juvenile court orders that a sentenced offender be released under supervision, the youth shall be transitioned or paroled, as appropriate to the youth's progress at the time of the court's order.

(C) When the juvenile court orders that a sentenced offender be recommitted to TYC without a determinate sentence, the youth's eligibility for release on parole or transition or disciplinary movements shall be governed by the release criteria and procedures for the classification the youth would have received if not a sentenced offender.

(2) Disciplinary Movement. A sentenced offender may be assigned to any appropriate placement, including a high restriction facility, following a level I or II disciplinary hearing.

(3) Movement Exceptions. Sentenced offenders may be considered for release under a hardship condition only if:

(A) the youth is less than 18 years of age and the release is approved by the committing court; or

(B) the youth is 18 years of age or older and meets the exception criteria for the classification the youth would have received if not a sentenced offender.

(h) Notification. Parents or guardians will be notified of all movements.

Filed with the Office of the Secretary of State, on April 9, 1999.

TRD-9902130

Steve Robinson
Executive Director

Texas Youth Commission

Effective date: April 9, 1999

Expiration date: August 7, 1999

For further information, please call: (512) 424-6244

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37 TAC §85.35

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

Texas Youth Commission (TYC) adopts on an emergency basis the repeal of §85.35, concerning Special Circumstances: Multiple Commitment Orders. This section is being repealed and the information regarding youth committed under concurrent determinate sentence and indeterminate commitment orders has

been proposed for adoption in a new section (GAP) §85.33 of this title (relating to Program and Movement of Sentenced Offenders).

This repeal is adopted on an emergency basis to allow for the publication of the new section (GAP) §85.33 of this title, as discussed above. The new section will provide clarity of agency intent regarding release of sentenced offenders. Any unintended early release of a sentenced offender could result in a safety risk to the general public.

The repeal is adopted on an emergency basis under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The adopted rule implements the Human Resource Code, §61.034.

§85.35. *Special Circumstances: Multiple Commitment Orders.*

Filed with the Office of the Secretary of State, on April 9, 1999.

TRD-9902132

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: April 9, 1999

Expiration date: August 7, 1999

For further information, please call: (512) 424-6244

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 71. Office of the Secretary of State

The Office of the Secretary of State proposes revisions to Chapter 71. These revisions are concurrent with review of this chapter under the Section 167 of Article IX, General Appropriations Act, as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 2032). This revision proposes the repeal of §§71.1-71.3, 71.5, 71.6, 71.11, 71.21-71.26, 71.40-71.48 and 71.50. The repeals are necessary to remove rules that repeat the text contained in statutory language or in other rules. The rules concerning private use of the state seal of Texas are proposed for repeal in order to propose them under new Chapter 72. The Office of Secretary of State proposes new §71.1, concerning the availability of public records. This new section reorganizes the provisions that are contained in existing §§71.6 and 71.21-71.26. New §71.21 concerning service of process will replace rules being repealed from Chapter 73.

Dan Procter, Associate Deputy Assistant for the Communications Section, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government.

Mr. Procter also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be fewer rules to follow. Fewer rules will simplify access to public records on file with the Office of the Secretary of State. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted in writing to Dan Procter, Texas Register, 1019 Brazos, Room 245, Austin, Texas 78701.

Subchapter A. Practice and Procedure

1 TAC §§71.1-71.3, 71.5, 71.6, 71.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the authority of Texas Government Code, Chapter 405.

The Government Code, Chapters 552 and 2001 affect this proposal.

§71.1. *Conflicting Rules.*

§71.2. *Communications.*

§71.3. *Business To Be Transacted in Writing.*

§71.5. *Times for Taking Action.*

§71.6. *Public Record.*

§71.11. *Petition for Adoption of Rules.*

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 April 9, 1999.

TRD-9902108

Jeff Eubank

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 463-5562



Subchapter B. Inspection of Public Records

1 TAC §§71.21-71.26

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

The repeals are proposed under the authority of Texas Government Code, Chapter 405.

The Government Code, Chapters 552 and 2001 affect this proposal.

- §71.21. *Applications.*
- §71.22. *Documents Unavailable.*
- §71.23. *Designated Inspection Area.*
- §71.24. *Limited Copies Available at Times of Request.*
- §71.25. *Approval of Applications to Review Documents.*
- §71.26. *Inspection Hours.*

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 April 9, 1999.

TRD-9902109

Jeff Eubank

Assistant Secretary of State
Office of the Secretary of State

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 463-5562



Subchapter C. Private Use of the State Seal of Texas

1 TAC §§71.40-71.48, 71.50

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

The repeals are proposed under the authority of Texas Government Code, Chapter 405.

No other codes or statutes are affected by this proposal.

- §71.40. *Definitions.*
- §71.41. *Application Process.*
- §71.42. *Exemptions.*
- §71.43. *Denial of Application.*
- §71.44. *Fees: Payment of Money.*
- §71.45. *Licensing.*
- §71.46. *Quarterly Report.*
- §71.47. *Monitoring.*
- §71.48. *Enforcement.*
- §71.50. *Standard Designs.*

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 April 9, 1999.

TRD-9902110

Jeff Eubank

Assistant Secretary of State
Office of the Secretary of State

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 463-5562



Chapter 71. General Policies and Procedures

Subchapter A. Inspection of Public Information

1 TAC §71.1

The new section is proposed under the authority of Texas Government Code, Chapter 405.

The Government Code, Chapters 552 and 2001 affect this proposal.

§71.1. Inspection of Public Information.

(a) Access to documents. Unless otherwise provided by constitutional provision, statutory provision, or judicial decision, all documents on file with the Office of the Secretary of State (Office) are specifically declared to be public record.

(1) Public access to documents on file with the Office requires the approval and supervision of an authorized Office employee to ensure the security and integrity of the documents.

(2) Documents will be available for examination during regular office hours in a manner that will not interfere with the operation of the Office.

(b) Written request. Apply to review documents on forms promulgated by the Office or in a written request describing the information by name and/or number.

(1) Be prepared to provide and verify the name and address of the applicant with a valid state driver license or other photo-identification.

(2) Applications will be handled in the order in which they are received.

(c) Documents Unavailable. If a document is in active use or in storage and, therefore, not available upon request, the Office shall specify in writing the date and hour that the requested document will be available for inspection.

(d) Limited copies available at time of request. The Office may limit the number of pages, which can be copied and supplied during a person's visit if the number of copies requested is beyond the reasonable capacity of the available personnel and machines. Copies in excess of the number available during a person's visit will be made and mailed to the applicant in the order in which the request is received.

(e) Designated inspection area. Persons inspecting documents may do so only in a designated inspection area. Each division of the Office shall designate an area where an employee may assist persons inspecting documents.

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 April 9, 1999.

TRD-9902106

Jeff Eubank

Assistant Secretary of State
Office of the Secretary of State

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 463-5562



Subchapter B. Service of Process

1 TAC §71.21

The new section is proposed under the authority of Texas Government Code, Chapter 405.

The Government Code, Chapters 552 and 2001 affect this proposal.

§71.21. Service of Process.

(a) Service on the Secretary. Service of process on the Secretary of State may be accomplished under many of the existing statutory authorities by delivering to the Secretary of State or to any clerk so designated by the secretary of state, two copies of the process. The name and appropriate address of the person or corporation being named as defendant must be provided. It is the responsibility of the attorney or person seeking service of process to determine when to obtain and to secure personal service of process upon the Secretary of State.

(b) Forwarding by the Secretary. One copy of the petition and citation will be forwarded by registered or certified mail, as appropriate under the particular statute under which service is being made, to the person or corporation named at the address provided.

(c) Certificate of Service. Upon request, the Secretary of State will issue a certificate showing:

(1) That service was accomplished;

(2) That a copy of the process was forwarded to the named defendant at the specified address; and

(3) The disposition of the mailing shown on the postal return receipt.

(d) Fees. The fee due the Secretary of State for maintaining a record of service upon the Secretary of State shall be as provided in the Texas Business Corporation Act, Article 10.01. The fee for issuing a certificate of service shall be as provided in Texas Government Code Annotated §405.031.

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 April 9, 1999.

TRD-9902107

Jeff Eubank

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 463-5562



Chapter 72. State Seal

1 TAC §§72.40-72.48, 72.50

The Office of the Secretary of State proposes new §§72.40-72.48 and 72.50, concerning the State Seal. The new sections are proposed as part of a reorganization of rules in Chapter 71, concerning general policies and procedures. The rules concerning the state seal are being proposed under this new chapter to separate them from the rules concerning inspection of public information. The text of these proposed new sections is similar in content to the existing text under §§71.40-71.48 and 71.50, which are proposed for repeal. These revisions are concurrent with rules review under the Section 167 of Article IX, General Appropriations Act, as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 2032). Following publication of the proposed review, we have received

one letter commenting on the review. An individual commenter recommended that the term "state seal of Texas" be shortened to "state seal". The commenter also recommended that the standard designs in §71.50 are not limited to private use of the state seal. He suggested the rules be renamed "State Seal." The Office agrees with the commenter's recommendations, which are reflected in the text of the proposed new rules in Chapter 72.

Dan Procter, Associate Deputy Assistant for the Communications Section, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government.

Mr. Procter also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be better organization of the rules under the Office of the Secretary of State. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted in writing to Dan Procter, Texas Register, 1019 Brazos, Room 245, Austin, Texas 78701.

The new sections are proposed under the authority of Texas Government Code, Chapter 405.

Texas Business and Commerce Code, §17.08 affects these rules.

§72.40. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Unless otherwise expressly provided, the past, present, or future tense includes the other; the masculine, feminine, or neuter gender each includes the other; and the singular and plural number each includes the other.

(1) Abuse—Any departure from reasonable use: immoderate or improper use; use contrary to customary or accepted practices and protocols would be a misuse of the state seal.

(2) Annual gross receipts—Gross receipts received during the calendar year.

(3) Applicant—A person who has applied for license.

(4) Application—The act of making a formal request for licensed permission to use the state seal.

(5) Benefit—Anything reasonably regarded as an economic gain or an economic advantage.

(6) Calendar year—Period of time from January 1st to December 31st, inclusive.

(7) Commercial purpose—A purpose that is intended to result in a profit or other tangible benefit but does not include:

(A) an official use in a state function or the use of the state seal or a representation of the state seal for a political purpose by an elected official of this state;

(B) the use of the state seal or a representation of the state seal in an encyclopedia, dictionary, book, journal, pamphlet, periodical, magazine, or newspaper incident to a description or history of seals, coats of arms, heraldry, or the state of Texas;

(C) the use of the state seal or a representation of the state seal in a library, museum, or educational facility incident to

descriptions or exhibits relating to seals, coats of arms, heraldry, or the state of Texas;

(D) the use of the state seal or a representation of the state seal in a theatrical, motion-picture, television, or similar production for a historical, educational, or newsworthy purpose; or

(E) the use of the state seal or a representation of the state seal for another historical, educational, or newsworthy purpose if authorized in writing by the secretary of state.

(8) Denial—A refusal to grant a license.

(9) Elected official—Any individual who has been elected to an office of state government which is filled by the choice of the voters, including a member of the legislature.

(10) General public—Any person of any nation, state, county, municipality, or community including individuals who are employed by the State of Texas.

(11) Gross receipts—Total amount of money or the value of the benefits received from the sale of licensed products.

(12) License—Permission by the secretary of state to conduct the use, manufacture, distribution, mass production, replication, sale, or incorporation into advertisement, draft, or design the state seal within the accepted criteria of this title.

(13) Licensed product—A state seal product, which has been approved by a license.

(14) Licensee—The applicant who receives permission to use the state seal.

(15) Manufacturer—Any individual, partnership, corporation, or other legal entity which transforms raw or prepared materials into a product for trade or sale, including a publisher, printer, or advertiser.

(16) Nonexact representation—A deceptively similar representation of the state seal, including a state agency's seal, which incorporates the state, seal.

(17) Nonofficial use—Any use of the state seal that is not an official use.

(18) Official use—The use of the state seal by an officer or employee of this state in performing a state function.

(19) Person—Includes an individual, corporation, partnership, association, and any other legal entity.

(20) Political purpose—Any purpose designed to obtain or publicize a public office or position.

(21) Product—A good or service produced, manufactured, or provided, either by natural means, by hand, or with tools, machinery, chemicals, or the like.

(22) Representation of the state seal—Includes a nonexact representation that the secretary of state determines is deceptively similar to the state seal.

(23) Reverse of the state seal—has the meaning defined by Article 6139f, Revised Civil Statutes.

(24) Revocation—An unconditional cancellation and nullification of an existing license by the Office of the Secretary of the State of Texas.

(25) State agency—Any administrative department or commission established by the State of Texas Constitution, the governor, or the Texas Legislature.

(26) State arms—has the meaning defined by Article 6139f, Revised Civil Statutes.

(27) State function—A state governmental activity authorized or required by law.

(28) State seal—means: The State Seal of Texas as defined by Article IV, Section 19 of the Texas constitution.

(A) the reverse of the state seal; and

(B) the state arms.

(29) Statute—Texas Business and Commerce Code, §17.08.

(30) Suspension—A temporary stop order to previously licensed uses.

§72.41. Application Process.

(a) Any person not a state public official, or under the express direction of a state agency and conducting official state business must, prior to any use of the state seal in any commercial reproduction, distribution, advertisement, manufacture, promotion, replication, sale, or any such activity reasonably construed to be embraced by this description:

(1) complete and file with the Office of the Secretary of State, on a form prescribed by that office, an application for a license for the private nonofficial use of the state seal;

(2) obtain such license from the Office of the Secretary of State.

(b) A complete application must:

(1) be legibly printed or typewritten;

(2) include a specific description of the intended usage involving the state seal;

(3) be accompanied by a precise description and the specification of the actual product to bear the state seal in the form of an architectural drawing, an engineer's draft to scale, sales brochure, or lucid photograph; and

(4) be accompanied by the application fee required by the statute and as set forth in § 72.44 of this title (relating to Fees; Payment of Money).

(c) Drawings and drafts must be done on standard size paper (8 1/2 inches by 11 inches). Drawings and drafts will become a permanent part of the application file.

(d) Upon approval of a complete application, and payment of the licensing fee, as set forth in §72.44 of this title (relating to Fees; Payment of Money), the licensee shall receive from the secretary of state a certificate bearing an identification number. Such number will be composed of:

(1) letters representing the initials of the name of the current secretary of state of Texas;

(2) four digits indicating the numerical month and year in which the license was issued; and

(3) three digits for the sequential number of the license.

(e) Except as otherwise provided by law, no seal of any state agency, which incorporates the state seal, may be used for a nonofficial use by any person including any official or employee of said state agency. Unless a license is first obtained pursuant to the procedures herein described, a person may not use a state agency's representation of the state seal for a commercial purpose.

§72.42. Exemptions.

(a) State agencies and officials who use the state seal for official uses or state functions have no application or fee requirement; however, in an effort to achieve uniformity and continuity, state agencies and officials are encouraged to submit their intended uses and renditions of the state seal to the secretary of state.

(1) When a manufacturer or vendor solely produces for, or solely sells or distributes to a state agency a product bearing the state seal for an official use or for a state function, no application or license is required.

(2) A manufacturer or vendor seeking the exemption as set forth in paragraph (1) of this subsection must provide the secretary of state's office with the following:

(A) a signed statement from that state agency or appropriate state official that the product has been or will be used by the state agency for an official use or a state function; and

(B) a certification, on a form prescribed by the secretary of state's office, from the manufacturer or vendor that the product is not available to the general public.

(3) Distribution or sale of the product to the general public by the state agency shall not preclude a manufacturer or vendor from obtaining the exemption, as set forth in paragraph (1) of this subsection.

(4) When a manufacturer or vendor produces for, or sells or distributes to a state agency a product bearing the state seal that is also available to the general public, the manufacturer or vendor must file an application in accordance with §72.41(a) of this title (relating to Application Process), obtain a license in accordance with §72.45(a) of this title (relating to Licensing), and pay, except as otherwise provided by these administrative regulations, all fees required by §72.44 of this title (relating to Fees; Payment of Money).

(5) Gross receipts received from the sale of licensed products to state agencies under the conditions set forth in paragraph (4) of this subsection are exempt from the royalty fee required by the statute and §72.44 of this title (relating to Fees; Payment of Money), provided the manufacturer or vendor of the licensed products provides the secretary of state's office with a signed statement from that state agency or appropriate state official that the products have been or will be used by the state agency for an official use or a state function.

(b) Elected officials who use the state seal for political purposes have no application or fee requirement.

(1) When a manufacturer or vendor solely produces for, or solely sells or distributes to an elected official a product bearing the state seal for a political purpose, no application or license is required.

(2) A manufacturer or vendor seeking the exemption as set forth in paragraph (1) of this subsection must provide the secretary of state's office with the following:

(A) a signed statement from the elected official or designated agent that the product has been or will be used by the elected official for a political purpose; and

(B) a certification, on a form prescribed by the secretary of state's office, from the manufacturer or vendor that the product is not available to the general public.

(3) Distribution or sale of the product to the general public by the elected official shall not preclude a manufacturer or vendor from obtaining the exemption, as set forth in paragraph (1) of this subsection.

(4) When a manufacturer or vendor produces for, sells, or distributes to an elected official a product bearing the state seal that is also available to the general public, the manufacturer or vendor must file an application in accordance with §72.41(a) of this title (relating to Application Process), obtain a license in accordance with §72.45(a) of this title (relating to Licensing), and pay, except as otherwise provided by these administrative regulations, all fees required by §72.44 of this title (relating to Fees; Payment of Money).

(5) Gross receipts received from the sale of licensed products to an elected official under the conditions set forth in paragraph (4) of this subsection are exempt from the royalty fee required by the statute and §72.44 of this title (relating to Fees; Payment of Money), provided the manufacturer or vendor of the licensed products provides the secretary of state's office with a signed statement from the elected official or designated agent that the products have been or will be used by the elected official for a political purpose.

(c) The manufacturer of a product bearing the state seal bears the responsibility for filing the necessary application, obtaining the appropriate license, and the payment of all fees required by the statute and these administrative regulations.

(1) Vendors or resellers are exempt from the application, licensing, and fee requirements of the statute and these administrative regulations where the manufacturer of the product transferred has obtained the required state seal license, provided the vendor or reseller, prior to resale, obtains from the manufacturer, on a form prescribed by the secretary of state's office, a certification of the manufacturer's license.

(2) The certification shall contain the manufacturer's name, license number, and the type and number of items purchased.

(3) The certification must be kept and maintained at the vendor or reseller's place of business for four years and made readily available for inspection by the secretary of state's office upon request.

(4) A vendor or reseller who fails to obtain, maintain, or make readily available for inspection the certifications of the manufacturer's license shall be responsible for obtaining the necessary license and the payment of all fees required by the statute and these administrative regulations.

§72.43. Denial of Application.

An original or renewal application may be denied for any of the following reasons:

(1) failure of the application to comply with the statute and these administrative regulations;

(2) failure to include the required fee;

(3) where the intended use is deemed by the secretary of state to be detrimental to the image of the state and not in its best interest.

§72.44. Fees: Payment of Money.

(a) Application fees are required to be paid at the time of presenting the original or renewal application for license. Licensing fees must be paid within 21 days of the approval of the original or renewal license. Royalty fees must be received with each quarterly report and in accordance with the deadlines set forth under §72.46(c) of this title (relating to Quarterly Reports). A fee shall be deemed delinquent if not received within 30 days after it is due.

(b) All fees paid to the secretary of state shall be in United States currency, cashier checks, money orders, certified checks, or personal or corporate checks. Payment tendered in any other form

will result in the delay or cancellation of either the application or license.

(c) A mere change of purpose after the payment of fees, as when an applicant desires to withdraw an application from filing, or when a licensee terminates its license, will not entitle either the applicant or the licensee to a refund of any fees paid under the statute or these administrative regulations.

(d) Fee schedule is as follows.

(1) Original or renewal application fee (Nonrefundable)–\$35.

(2) Original or renewal license fee–\$250.

(3) Royalty fee–3.0% of annual gross license receipts in excess of \$5,000.

(e) Failure to pay fees as required by this subsection will result in the following.

(1) Failure to pay the original or renewal application fee shall result in the denial of the application.

(2) Failure to pay the licensing fee within 21 days of the approval of the original or renewal application shall result in the denial of a license and the cancellation of the previously approved application.

(3) Failure to pay royalty fees may result in suspension or revocation of license.

(4) Appropriate enforcement action may be requested by the secretary of state under §72.48 of this title (relating to Enforcement) where a licensee has failed to pay fees when due.

§72.45. Licensing.

(a) Grant of license. Upon approval of an application, and payment of the licensing fee as set forth in §72.44 of this title (relating to Fees; Payment of Money), any individual or corporation may be granted a license which will certify to all that such person has complied with the requirements of application and filing. Licensees may engage in the reproduction of the state seal for private and public nonofficial uses. It is accepted that the licensee will use the state seal in an exemplary manner. Any and all transactions which involve the vendor, manufacturer, or distributor of the state seal and the public are expected to be handled in an honest and conscientious fashion. A licensee must display the license in a conspicuous manner in the licensee's office or place of business.

(b) Renewal of license. A renewal of a license must take place annually on the renewal application and license form provided by the secretary of state's office. A renewal may not be granted if licensee:

(1) has used the state seal in a manner that is detrimental to the image of the state and not in its best interests; or

(2) has violated either the statute or these administrative regulations.

(c) Suspension of license. The licensee's use of the state seal must not be detrimental to the image of the state and its best interests, by virtue of its draft, design, presentation, association, distribution, manufacture, or sale. Any such use, late payment, or nonpayment of a required fee, violation of either the statute or these administrative regulations will result in the suspension of the license.

(1) A suspension may not take place until the licensee has been sent notice and given an opportunity at a hearing to show that there is no basis for a suspension.

(2) Any distribution, manufacture, and/or sale of licensed products after the license has been suspended is unlawful.

(3) Failure to observe a suspension or accompanying directive may result in a revocation of the license.

(d) Revocation of an existing license.

(1) A license may be revoked for, but not limited to, the following reasons:

(A) use detrimental to the image of the state and not in its best interests;

(B) abusive use of the state seal;

(C) criminal use of the state seal;

(D) willful failure to observe reporting requirements;

(E) a violation of the statute or these administrative regulations;

(F) a continuing violation after notice thereof;

(G) failure or refusal to allow monitoring under §72.47 of this title (relating to Monitoring).

(2) A revocation may not take place until the licensee has been sent notice and given an opportunity at a hearing to show that there is no basis for a revocation.

§72.46. Quarterly Report.

(a) Licensees must file with the Office of the Secretary of State a statement (i.e., quarterly report), on a form prescribed by that office, containing the following:

(1) a statement of the total quantity of licensed products sold;

(2) the total amount of gross receipts received from the sale of licensed products during the quarter;

(3) where the licensee has obtained an exemption under §72.42(a)(5) of this title (relating to Exemptions), the total amount of gross receipts received from the sale of licensed products during the quarter to state agencies;

(4) where the licensee has obtained an exemption under §72.42(b)(5) of this title (relating to Exemptions), the total amount of gross receipts received from the sale of licensed products during the quarter to elected officials;

(5) the total amount of gross receipts derived by the licensee from other uses of the state seal during the quarter;

(6) the amount of any royalty fee due for the quarter.

(b) The licensee shall remit with each quarterly report the amount of any royalty fee due or a statement as to the reason no royalty fee is due.

(c) Where an applicant is licensed after January 1 of a calendar year, the licensee's first quarterly report shall include the amount of gross receipts received on licensed products from the beginning of the calendar year.

(d) A quarterly report must be filed in the Office of the Secretary of State in each quarter in accordance with the following schedule:

(1) first quarter (January 1-March 31)–quarterly report due April 15 of the current calendar year;

(2) second quarter (April 1-June 30)-quarterly report due July 15 of the current calendar year;

(3) third quarter (July 1-September 30)-quarterly report due October 15 of the current calendar year;

(4) fourth quarter (October 1-December 31)-quarterly report due February 15 of the following calendar year.

§72.47. Monitoring.

The Office of the Secretary of State may conduct at its discretion, random, unannounced examinations of the licensee's records during normal business hours (8 a.m. through 5 p.m.) to determine the licensee's compliance with the statute and these administrative regulations. All records related to the statute and these administrative rules shall be kept in accordance with generally accepted accounting principles at the licensee's place of business or a place designated by written notification by certified mail, return receipt requested, and maintained for four years. If the licensee fails to keep and make readily available accurate records or file quarterly reports under §72.46 of this title (relating to Quarterly Reports), the secretary of state may estimate the royalty fee due based on any information available, including, but not limited to, records of vendors, resellers, or manufacturers. Information contained in quarterly reports filed with the Office of Secretary of State pursuant to §72.46 of this title will be disclosed to the state comptroller, the state auditor, or any similar state investigatory agency upon request.

§72.48. Enforcement.

In addition to the suspension or revocation of a state seal license, the Office of the Secretary of State may:

(1) request that the Texas attorney general bring a civil action to enjoin either a violation of the statute or these administrative regulations relating to the state seal, or to collect delinquent fees;

(2) refer any criminal violations to the appropriate prosecuting authority under the statute.

§72.50. Standard Designs.

The following illustrations depict the standard designs for the state seal, the reverse of the state seal, and the state arms.

(1) State seal. Figure: 1 TAC §72.50(1)

(2) Reverse of the state seal. Figure: 1 TAC §72.50(2)

(3) State arms. Figure: 1 TAC §72.50(3)

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 April 9, 1999.

TRD-9902111

Jeff Eubank

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 463-5562



Chapter 73. Statutory Documents

Subchapter C. Service of Process

1 TAC §§73.31-73.34

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Secretary of State proposes the repeal of §§73.31-73.34, concerning Service of Process. These sections are being repealed as part of a revision to Chapter 71 of this title (relating to Practice and Procedure). The provision contained in the service of process rules are being proposed new as §71.21.

Dan Procter, Associate Deputy Assistant for the Communications Section, has determined that there will be no fiscal implications for state or local government as a result of the repeal.

Mr. Procter also has determined that for each year of the first five years the rules are in effect the public benefit anticipated would be improved organization of the Practice and Procedure rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted in writing to Dan Procter, Texas Register, 1019 Brazos, Room 245, Austin, Texas 78701.

The repeals are proposed under the authority of Texas Government Code, Chapter 405.

No other codes or statutes are affected by this proposal.

§73.31. *Service on the Secretary.*

§73.32. *Forwarding by the Secretary.*

§73.33. *Certificate of Service.*

§73.34. *Fees.*

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 April 9, 1999.

TRD-9902112

Jeff Eubank

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 463-5562



TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter D. Notice

16 TAC §22.52

The Public Utility Commission of Texas (commission) proposes amendments to §22.52 relating to Notice in Licensing Proceedings, and §22.104 relating to Motions to Intervene. Project Number 20580 has been assigned to this proceeding. The proposed amendments will conform these sections to the expedited approval schedule in §25.101 of this title (relating to Certification Criteria), as it was adopted at the February 18, 1999 Open Meeting. Adopted §25.101 was published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1999).

Section 25.101 replaced existing §23.31 of this title (relating to Certification Criteria) as it relates to electric service providers. Section 25.101 was modified from §23.31 to bring the section concerning certification criteria into agreement with §§25.191-25.198 and 25.200-25.204 of this title (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas) as adopted at the commission's February 4, 1999 Open Meeting, under Project Number 18703, *Review of Transmission Access Rules, Substantive Rules §23.67 and §23.70*. Section 25.101 as adopted gives great weight to recommendations for transmission lines made by the Electric Reliability Council of Texas (ERCOT) independent system operator (ISO) and allows for certain transmission line applications to be processed on an expedited basis. It is necessary to amend §22.52 and §22.104 to bring these sections into agreement with §25.101 to allow expedited processing of: (1) uncontested applications pursuant to §25.101(c)(5)(A); (2) minor boundary or service area exception applications pursuant to §25.101(c)(5)(B); (3) uncontested transmission line applications pursuant to §25.101(c)(5)(C); or projects deemed critical to the reliability of the Electric Reliability Council of Texas (ERCOT) system pursuant to §25.101(c)(5)(D). Section 25.52(b), concerning notice by applicants for a new generating plant, is being also amended to refer applicants to the Public Utility Regulatory Act (PURA), Chapter 34 and the commission's substantive rules, Chapter 25, Subchapter H, relating to Electrical Planning.

Changes are proposed to §22.52(c)(1) concerning notice in telephone licensing proceedings to clarify that an actual date for intervention should be included in the notice and that requests for intervention should be in writing.

Tom Hunter, assistant general counsel, Office of Regulatory Affairs-Legal 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. Hunter 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 expedited approval of certain transmission line applications, helping to ensure adequate and reliable transmission of electric services. There will be no effect on small 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. Hunter 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.

Comments on the proposed amendments (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 30 days after publication. 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 sections. All comments should refer to Project Number 20580.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052

(Vernon 1998) (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, including rules of practice and procedure.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.52. *Notice in Licensing Proceedings.*

(a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes and ~~notice of intent and~~ certification proceedings for new electric generating plants, the applicant shall give notice in the following ways:

(1) Applicant shall publish notice of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the application is filed with the commission. This notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project.

(A) The notice shall also include the following statement in the first paragraph: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's (commission) Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 45 [70] days after the date the application was filed with the commission) and a letter requesting intervention should be received by the commission by that date."

(B)-(D) (No change.)

(2) (No change.)

(3) Applicant shall, upon filing an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate, including the preferred location and any alternative location of the proposed facility. For purposes of this paragraph, land is directly affected if an easement would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 200 feet of the proposed facility.

(A) The notice must contain all information required in paragraph (1) of this subsection and contain the following statement in the first paragraph of the notice printed in bold-face type: "Your land may be directly affected in this proceeding. If the preferred route or one of the alternative routes requested under the certificate is approved by the Public Utility Commission of Texas, the utility will have the right to build a facility which may directly affect your land. This proceeding will not determine the value of your land or the value of an easement if one is needed by the utility to build the facility. If you have questions about this project, you should contact (name of utility contact) at (utility contact telephone number). If you wish to participate in this proceeding by becoming a party or to comment upon action sought, you should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's (commission) Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. If you wish to participate

in this proceeding by becoming a party, the deadline for intervention in the proceeding is (date 45 [70] days after the date the application was filed with the commission), and you must send a letter requesting intervention to the commission which is received by that date."

(B)-(C) (No change.)

(D) Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). The proof of notice shall include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice shall be filed with the commission no later than 20 days after the filing of the application.

(E) Upon the filing of proof of notice as described in subparagraph (D) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it shall immediately provide notice in the same form described in subparagraphs (A) and (B) of this paragraph, except that the notice shall state that the person has 15 [20] days to intervene. The utility shall immediately notify the commission that such supplemental notice has been provided.

(4)-(5) (No change.)

(6) Upon entry of a final, appealable order by the commission approving an application, the utility shall provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection shall be provided to the commission's Office of Regulatory Affairs [general counsel].

(A)-(B) (No change.)

(b) Notice by applicants for new electric generating plant. Persons planning to apply for a certificate of convenience and necessity for a new electric generating plant shall file an application pursuant to the PURA, Chapter 34 (Electrical Planning) and the commission's substantive rules, Chapter 25, Subchapter H of this title (relating to Electrical Planning. [a notice of such intent with the commission pursuant to PURA, 37.058. Applicants for new electric generating plants shall give notice in the following ways:]

{(1) Applicants for a Notice of Intent shall provide notice of the application by publishing in a newspaper having general circulation in the county or counties in which the generating plant is proposed to be located, if known, and in each county containing territory served by the utility, once each week for two consecutive weeks beginning the week after the notice of intent is filed with the commission. This notice shall identify the site of the facility, if known. This notice shall further identify in general terms the type of facility, including at a minimum the fuel to be used, basic technology, size of the plant and estimated service date, and the estimated expense associated with the project. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission's (commission) Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is 70 days after the date the application was filed with the commission." Proof of publication of notice shall be in the form of a publisher's

affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.}

{(2) Applicants for a certificate of convenience and necessity for a new electric generating plant shall provide notice of the application by publishing in a newspaper having general circulation in the county or counties in which the generating plant will be located, and in each county containing territory served by the utility, once each week for two consecutive weeks beginning the week after the application is filed with the commission. Applicant shall also provide notice to the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. This notice shall contain the same information as required in paragraph (1) of this subsection. Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention. Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.}

(c) Notice in telephone licensing proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:

(1) Applicants shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission at P. O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's (commission) Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical

to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

(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 April 9, 1999.

TRD-9902103

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 23, 1999

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

Subchapter F. Parties

16 TAC §22.104

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (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, including rules of practice and procedure.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.104. *Motions to Intervene.*

(a) (No change.)

(b) Time for filing motion. Motions to intervene shall be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding officer. ~~[The deadline for filing a motion to intervene in a licensing or notice of intent proceeding shall be 70 days after the application is filed.]~~ The motion shall be served upon all parties to the proceeding and upon all persons that have pending motions to intervene.

(c) (No change.)

(d) Late intervention.

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

(4) In an electric licensing proceeding in which a utility did not provide direct notice to an owner of land directly affected by the requested certificate, late intervention shall be granted as a matter of right to such a person, provided that the person files a motion to intervene within 15 [20] days of actually receiving the notice. Such a person should be afforded sufficient time to prepare for and participate in the proceeding.

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 April 9, 1999.

TRD-9902104

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 23, 1999

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 115. Control of Air Pollution from Volatile Organic Compounds

Subchapter F. Miscellaneous Industrial Sources

30 TAC §§115.510, 115.512, 115.513, 115.515, 115.516

The Texas Natural Resource Conservation Commission (commission) proposes new §115.510, Concerning Definitions, and amendments to §115.512, Concerning Control Requirements; §115.513, Concerning Alternate Control Requirements; §115.515, Concerning Testing Requirements; and §115.516, Concerning Record Keeping Requirements.

The commission proposes the removal of references to "emulsified asphalt" in §§115.512(3), 115.515(1), and 115.516 and substitution of the phrase "alternative asphalt." The commission proposes that "Alternative asphalt" be defined in new §115.510, Cutback Asphalt Definitions. The commission proposes the amendment to §115.512(1) to change the total annual volume of cutback use in Nueces County from 8.0% to 7.0%, and to amend §115.512(3) to allow both use and production of alternative asphalt. In §115.513, the word "section" is changed to "division."

EXPLANATION OF PROPOSED RULES

In the 1970's, the United States Environmental Protection Agency (EPA) identified cutback mixes, commonly known as "cold mixes," as a significant source of volatile organic compounds (VOCs) and urged states to promulgate rules which limit their manufacture and use. Since EPA's 1977 report (*Control of Volatile Organic Compounds from the use of Cutback Asphalt*, EPA- 450/2-77-037), significant progress has been made by state agencies and the industry to more clearly identify and define the emissions from these mixes, as well as develop new mixes with less VOC emissions (e.g., emulsified cold mixes with little or no added solvents).

Over the past decades, the industry has been developing new cold mixes to meet market demands for alternative mixes with equal or less VOC emissions but equivalent road strengths. Most recent EPA memoranda and industry correspondence show that several new alternative cold mixes have been developed which have the same, or less, VOC emissions than traditional cutback asphalt cold mixes. These alternative mixtures use heavier petroleum agents in lieu of the lighter solvents. However, the existing rule language does not allow for these materials to be used as a substitute for cutback asphaltic concrete, and no language either in the state rule or in EPA control technology guidelines adequately defines "emulsified asphalt" to be inclusive of all compliant alternative mixes.

Cutback asphalt is any asphaltic concrete that has a significant amount of light petroleum distillate (usually diesel, kerosene, or naphtha) added at either the refinery or at the asphalt concrete plant, and is used principally for patching or emergency repairs.

Emulsified asphaltic concrete, also used for such repairs, contains some proportion of the light petroleum distillates combined with a non-volatile emulsifying agent (e.g., water or soap) to dilute the VOC emissions. These mixes are commonly referred to as "cold mixes" as the mix temperatures are lower than those used for standard hot mix asphalt pavements. The emissions from these cold mixes occur in equal proportion during the manufacture and storage, although over different time periods, as the VOCs flash off quickly during mixing and evaporate over time into the ambient air during storage in outdoor piles.

Cold mixes are categorized by the amount of solvents added to the liquid asphalt and include rapid-cure, medium-cure, and slow-cure cutbacks and emulsions, containing average added solvents of 20%, 14%, 16%, and 7.0%, respectively. The amount of VOC emissions from cold mixes are higher than VOC emissions from hot mixes (up to seven pounds VOC/ton cold mix as compared to an average of 0.2 pounds VOC/ton hot mix).

Currently, Chapter 115, Subchapter F regulates the manufacture, use, and sale of cutback asphaltic mixes in the designated nonattainment areas for ozone (Dallas, Denton, Collin, Tarrant, El Paso, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller, Jefferson, Orange, Hardin Counties) and Nueces County. According to §115.512(3), no one in the nonattainment areas may use, apply, sell, or buy "cutback asphalt containing VOC solvents for paving roadways, driveways, or parking lots during the peak ozone generating period from April 16 to September 15 of any year." Section 115.512(3) allows the use of "emulsified asphalt," with certain VOC restrictions, to comply with §115.512(2). To be produced in a nonattainment area during the peak ozone generating period, the emulsified mixes must conform with American Society of Testing and Materials (ASTM) Test Method D 244 as referenced in §115.515(1).

A proposed new section, §115.510, concerning Cutback Asphalt Definitions, includes a definition of "Alternative asphalt." In addition, the commission is proposing to relocate the existing definition of "Cutback asphalt" from §115.10, concerning Definitions, to §115.510. The proposed new §115.510 includes all definitions used exclusively within the Chapter 115 cutback asphalt rules. In separate rulemaking, the commission expects to delete the definition of "Cutback asphalt" from §115.10.

The proposed revisions to §§115.512(3), 115.515(1), and 115.516 remove the reference to "emulsified asphalt" in Subchapter F and substitute the phrase "alternative asphalt." These changes will allow companies the flexibility to use any available substitute material which meets the project's specifications, but maintains the VOC emissions compliance demonstration criteria specified in §115.515 and §115.516 involving the ASTM Test Method. These changes will give flexibility to industry, update the rule to match current scientific knowledge, and still insure VOC emission reductions in nonattainment areas.

Cutback use in nonattainment areas is limited to 7.0% of total annual volume averaged over a two-year period. Nueces County has a present limit of 8.0%, and the commission proposes to change this limit to 7.0%. As average annual use in nonattainment areas in recent years has been in the range of 3.5% to 4.0%, the proposal would not create any operational change, but would add to uniformity to have the same standard for all regulated areas. The agency is soliciting comments on this change.

The amendment to §115.512(3) regulating emulsified asphalt use is now being proposed to apply to alternative asphalts. Historically, this section has been interpreted to apply to both use and production of the applicable asphalt. The inclusion of the words "or produced" would add clarity to the existing intent.

In §115.513, concerning Alternate Control Requirements, the term "section" is replaced by the word "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

FISCAL NOTE

Jeffrey Grymkoski, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed revisions are in effect there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the rules.

PUBLIC BENEFIT

Mr. Grymkoski also has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated from enforcement of and compliance with these sections will be a continued reduction in the emission of VOCs and more cost-effective implementation and enforcement of air quality standards. All asphalt concrete plant operators in the designated nonattainment areas and Nueces County will be affected by this rule change, including small businesses. The economic impact of complying with the changes most likely will be positive in that it will alleviate the need for the asphalt industry to produce excess stockpiles of asphalt and store such reserves prior to the peak ozone generation period. It also can reduce the need for transporting cutback asphalt produced and stored outside the nonattainment area. There are no additional anticipated economic costs to persons who are required to comply with the amendments as proposed, as cost estimates by the Texas Department of Transportation and the asphalt industry indicate that the new alternative options will be equal to or less than the existing emulsified asphalt option.

SMALL BUSINESS ANALYSIS

There are no additional anticipated economic costs to small businesses that are required to comply with the amendments as proposed. Cost estimates by the Texas Department of Transportation and the asphalt industry indicate that the new alternative options will be equal to or less than the existing emulsified option. As the new alternative mixes are just another option, a small business is not precluded from continuing to use the existing emulsified mixes if there should be a cost differential in a particular location.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has 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 the Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The substitution of the term "alternative asphalt" for the existing "emulsified asphalt" will not change the current level of protection of the environment. The proposed rule amendments continue to protect the environment and reduce risks to human health from environmental exposure, but do not meet the definition of a major environmental rule because the VOC emission obligations have already been es-

established by federal law and state law and, thus, are not new requirements. The proposed amendments should not adversely affect the economy in a material way because the affected facilities are currently required to meet emission criteria identical to that existing. Therefore, this does not meet the definition of a "major" environmental rule.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under the Code, §2007.043. The specific purpose of this rulemaking is to give flexibility to industry, update the rule to reflect current scientific knowledge, and still insure VOC emission reductions in nonattainment areas. Promulgation and enforcement of this rulemaking will not affect private real property because the rule changes being proposed do not materially change the existing test methods or emission criteria that are currently enforced.

COASTAL MANAGEMENT PLAN

The commission has determined that the proposed rulemaking concerning Chapter 115, Subchapter F relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning consistency with the Texas CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the proposed action is consistent with the applicable CMP goals and policies, specifically §501.12(1), which is to protect, restore, and enhance the diversity, quality, functions, and values of coastal natural resource areas and §501.14(q), regarding compliance with 40 Code of Federal Regulations (CFR), Protection of Environment. The rule changes proposed here do not relax the VOC emission obligations established by federal and state law, thus the proposed rule complies with regulations in 40 CFR, Part 51 and therefore is consistent with this policy. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on the proposal will be held in Austin on May 19, 1999 at 10:00 a.m. in Building F, Room 5108 of the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log No. 98082-115-AI. Comments must be received by 5:00 p.m., May 24, 1999. For further information, please contact Terry Leifeste,

Office of Environmental Policy, Analysis, and Assessment, (512) 239-1873.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The new section and amendments are proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA. The new section and amendments also are proposed under the TCAA, §382.011, which provides the commission with the authority to control the quality of the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning monitoring requirements and examination of records.

The proposed new section and amendments do not implement any new state or federal requirement.

§115.510. Cutback Asphalt Definitions.

The following words and terms, when used in this division (relating to Cutback Asphalt), shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §115.10 of this title (relating to Definitions), §101.1 of this title (relating to Definitions), and §3.2 of this title (relating to Definitions).

(1) Alternative asphalt—An asphaltic substance that is used in lieu of conventional cutback asphalt and that complies with the emissions criteria in American Society of Testing and Materials (ASTM) Test Method D 244 as reapproved in 1980 and recognized in subsequent ASTM publications.

(2) Cutback asphalt—Any asphaltic cement which has been liquified by blending with petroleum solvents (dilutents).

§115.512. Control Requirements.

For persons in Nueces County and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the following control requirements shall apply.

~~{(1) In Nueces County, the use of cutback asphalt containing volatile organic compound (VOC) solvents for the paving of roadways, driveways, or parking lots is restricted to no more than 8.0% of the total annual volume averaged over a two-year period of asphalt used or specified for use by any state, municipal, or county agency who uses or specifies the type of asphalt application.}~~

(1) [(2)] In Nueces County and in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the use of cutback asphalt containing VOC solvents for the paving of roadways, driveways, or parking lots is restricted to no more than 7.0% of the total annual volume averaged over a two-year period of asphalt used or specified for use by any state, municipal, or county agency who uses or specifies the type of asphalt application.

(2) [(3)] In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, no person shall allow the use, application, sale, or offering for sale of cutback asphalt containing VOC solvents for paving roadways, driveways, or parking lots during the period from April 16 to September 15 of any year.

(3) [(4)] When alternative asphalt [emulsified asphalt] is utilized or produced to comply with paragraph (2)[(3)] of this section, the maximum VOC content shall not exceed 12% by weight or the following limitations, whichever is more stringent:

(A)-(D) (No change.)

§115.513. *Alternate Control Requirements.*

For all affected persons in Nueces County and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division [section] may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.515. *Testing Requirements.*

For Nueces County and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with §115.512(4) of this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:

(1) American Society of Testing and Materials (ASTM) Test Method D 244 for determining volatile organic compound content of alternative asphalt [asphalt emulsions]; or

(2) (No change.)

§115.516. *Recordkeeping Requirements.*

For Nueces County and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any state, municipal, or county agency who uses or specifies the use of the type of asphalt or alternative asphalt [asphalt emulsion] affected by §115.512 of this title (relating to Control Requirements) shall maintain records sufficient to document compliance with applicable restrictions and shall make such records available upon request to representatives of the executive director [Texas Air Control Board], United States Environmental Protection Agency, or the local air pollution control agency having jurisdiction in the area.

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 April 9, 1999.

TRD-9902122

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: July 28, 1999

For further information, please call: (512) 239-1966

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

Subchapter A. General Provisions

Division 3. Formal Action by the Board

31 TAC §363.33

The Texas Water Development Board (the board) proposes an amendment to 31 TAC §363.33, concerning Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects. The amendment is made to reflect creation of the Texas Water Development Fund II by Article III, §49-d-8, the Texas Constitution, as a fund separate and distinct from the Texas Water Development Fund and to delete reference to specific accounts within the Texas Water Development Fund. Section 363.33 is further amended to establish the purchase of state participation projects as a separate interest rate-setting category. Economically Distressed Areas is clarified as the Economically Distressed Area Program Account.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the section.

Ms. Todd has also determined that for the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the sections will be to comply with Constitutional provisions. Ms. Todd has determined there will be no economic costs to small businesses or individuals required to comply with the section as proposed.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Greg Olin, (512) 463-7872, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendment is proposed under the Texas Water Code, Chapter 6, §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board and the Texas Constitution, Article 3, §49(d)(8).

The statutory provisions affected by the proposed amendment are Texas Water Code, Chapter 15, Subchapter J, and Chapter 17, Subchapter C.

§363.33. *Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects.*

(a) Procedure and Method for Setting Fixed Interest Rates.

(1) (No change.)

(2) For loans from the Texas Water Development Fund and Texas Water Development Fund II or for lending rates for purchases of the board's interest in state participation projects, the development fund manager will set the interest rate at the higher of:

(A)-(D) (No change.)

(3) (No change.)

(b) Lending Rate Scale. After each bond sale, or as necessary to meet changing market conditions, the board will set the lending rate scale for loans and state participation projects based upon cost of funds to the board, risk factors of managing the board loan portfolio, and market rate scales. To calculate the cost of funds, the board will add new bond proceeds to those remaining bond funds that are not currently assigned to schedule loan closings, weighting the funds by dollars and true interest costs of each source. The board will establish separate lending rate scales for tax-exempt and taxable projects from each of the following:

(1) loans from the Texas Water Development Fund and Texas Water Development Fund II; [~~Water Supply Account, Water Quality Enhancement Account, and Flood Control Account~~]; and]

(2) purchase of the board's interest in state participation projects from the State Participation Account; and

(3) [(2)] loans from the Economically Distressed Area Program Account. [~~Areas loans (Water Supply Account and Water Quality Enhancement Account).~~]

(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 April 8, 1999.

TRD-9902089

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: June 16, 1999

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



Part XV. Texas Low-Level Radioactive Waste Disposal Authority

Chapter 450. Planning and Implementation Fees

Subchapter A. Assessment of Fees

31 TAC §§450.1-450.4

The Texas Low-Level Radioactive Waste Disposal Authority proposes amendments of 31 TAC §§450.1-450.4, concerning planning and implementation fees for low-level radioactive waste generators for the state's fiscal year 1999. The amended sections assess the fees, specifies which entities should pay the fees, and provides for the collection and deposit of fees in the state treasury.

Tim Schaffner, Director of Accounting, has determined that for fiscal year 1999, there will be fiscal implications to the state as a result of enforcing or administering the subchapter. There will be an estimated increase in state government revenue for 1999 of \$3,715,797, but for fiscal years 2000-2003, there will be no fiscal implications for state government since the subchapter applies only to FY 1999. There will be no fiscal implications for local governments.

Mr. Schaffner also has determined that for 1999, the public benefits anticipated as a result of enforcing the subchapter as proposed will be that the waste generators, rather than the general revenue of the state, will provide the funding of the low-level radioactive waste disposal program.

The total anticipated economic costs to persons, generators, and small and large business generators of waste who are required to comply with this subchapter as proposed will be: \$3,715,797 in 1999.

Comments on the proposal may be submitted to Lee H. Mathews, Deputy General Manager and General Counsel, Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752.

The amendments are proposed under the Health and Safety Code, §402.054 which provides the Texas Low-Level Radioactive Waste Disposal Authority with the authority to adopt rules,

standards, and orders necessary to properly carry out the Texas Low-Level Radioactive Waste Disposal Authority Act, and §402.2721 which directs the authority to adopt planning and implementation fees.

The Texas Health and Safety Code, §402.054 and §402.2721 are affected by the amended sections.

§450.1. Purpose.

The purpose of this subchapter is to adopt, for this state's fiscal year 1999 [1998], planning and implementation fees to fund the Authority's budget for that fiscal year.

§450.2. Applicability.

(a) This subchapter applies to:

(1) persons licensed by the United States Nuclear Regulatory Commission to own or operate a production or utilization facility or other fixed nuclear facility in this state; and

(2) persons required to be licensed by the Texas Department of Health to possess or use radioactive material and who generated and shipped or caused to have shipped by others, 7.5 cubic feet or more of radioactive material to a licensed low-level waste disposal facility during the period January 1, 1997 [1996] through December 31, 1998. [~~December 31, 1997.~~]

(b) This subchapter does not apply to health care providers or institutions of higher education.

§450.3. Assessed Fees.

(a) Fees shall be assessed to persons subject to §450.2(a)(1) of this title (relating to Applicability), as follows:
Figure: 31 TAC §450.3(a)

(b) Fees shall be assessed to persons subject to §450.2(a)(2), as follows: \$500 plus an additional \$1.00 for every cubic foot in excess of 7.5 cubic feet of radioactive material generated and shipped.

(c) For purposes of determining shipment volumes under subsection (b) of this section, the board shall rely on the manifest information management system data base maintained by the United States Department of Energy and/or the Texas manifest reporting system maintained by the Texas Department of Health, as appropriate, and these records shall be determinative for purposes of assessing fees under subsection (b) of this section.

§450.4. Collection of Fees.

(a) Fees assessed by the board shall be collected by the Texas Department of Health and deposited in the state treasury in accordance with the Health and Safety Code, §§401.301, 401.306, and 402.0721.

(b) Fees assessed under this subchapter shall be paid in one payment equal to the 1999 [1997] assessment on or before May 1, 1999. [~~June 15, 1998.~~]

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 April 6, 1999.

TRD-9902038

Lee H. Mathews

Deputy General Manager and General Counsel

Texas Low-Level Radioactive Waste Disposal Authority

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 451-5292

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Subchapter B. Placement Planning

37 TAC §85.21

The Texas Youth Commission (TYC) proposes an amendment to §85.21, concerning program assignment system. The amendments to the section will allow for adjustments in residential placement assignments of youth committed to TYC. Adjustments are justified to ensure that youth are placed with consideration to level of risk and level of security provided by each placement. Specifically, youth classified as general offenders with medium risk level will be placed in high restriction rather than medium restriction level on initial placement. Youth classified as Violators of CINS Probation with a medium risk score will be placed in high restriction facilities on initial placement (previously omitted). A waiver is being amended to allow for placement assignment in a specialized treatment medium restriction facility when the treatment is most appropriate.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the 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. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance of the most appropriate residential placement for a youth considering safety of the public and treatment of the youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, concerning determination of treatment, which provides the Texas Youth Commission with the authority to order the youth's confinement under conditions TYC believes best for the youth's welfare and the interest of the public.

The proposed rule implements the Human Resource Code, §61.034.

§85.21. Program Assignment System.

(a) Purpose. The purpose of this rule is to establish an objective, equitable system of program assignment for each youth in TYC care. Based on each youth's offense(s), and risk level, TYC has predetermined the most appropriate level of restriction and minimum length of stay requirement for public protection and for promotion of rehabilitation. Youth in coeducational facilities have equal access to agency programs and activities.

(b) Applicability.

(1) For specifics regarding classification, see (GAP) §85.23 of this title (relating to Classification).

(2) For specifics regarding minimum length of stay, see (GAP) §85.25 of this title (relating to Minimum Length of Stay).

(3) For specifics regarding restriction levels, see (GAP) §85.27 of this title (relating to Program Restriction Levels).

(4) For specifics regarding completion of program and movement to another program, and for specifics on movement of sentenced offender options, see (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders) and (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).

(c) Placement System Factors. The program placement system shall incorporate the following factors.

(1) Classification shall be determined by the classifying offense and a finding regarding extenuating circumstances.

(2) The minimum length of stay shall be designated by the classification.

(3) Risk shall be assessed and used as a guideline in designating restriction level.

(4) Placements shall be made according to restriction and needs.

(A) Initial placements will always be to residential programs, [~~except for some youth classified as violators of CINS probation.~~]

(B) A youth's assessed service needs will be considered in the selection of a placement within the required level of restriction.

(d) System Description. The determining factors result in the following placement and length of stay determinations for all TYC youth on initial commitment, for youth recommitted for the commission of a felony or high risk offense, and for youth found at an administrative level I hearing to have committed a felony or high risk offense.

(1) A sentenced offender shall be sentenced by the court and, regardless of risk level, assigned to a program of high restriction with a fenced perimeter.

(2) A type A violent offender shall be assigned a minimum length of stay of 24 months, and with any risk level, assigned to a program of high restriction with a fenced perimeter.

(3) A type B violent offender shall be assigned a minimum length of stay of 12 months, and with any risk level, assigned to a program of high restriction.

(4) A chronic serious offender, controlled substances dealer, or firearms offender [~~classified on or after January 1, 1996,~~] shall be assigned a minimum length of stay of twelve months and with any risk level, assigned to a program of high restriction. [~~The minimum length of stay for these youth classified before January 1, 1996, is nine months.~~]

(5) A general offender classified:

[~~(A) on or after January 1, 1996,~~] shall be assigned a minimum length of stay of nine months, and with a:

(A) [~~(†)~~] high or medium risk level, assigned to a program of high restriction;

(B) ~~[(ii)] low [or medium] risk level, assigned to a program of medium restriction.~~

~~[(B) before January 1, 1996, shall be assigned a minimum length of stay of six months, and with a:]~~

~~[(i) high risk level, assigned to a program of high restriction;]~~

~~[(ii) low or medium risk level, assigned to a program of medium restriction.]~~

(6) A Violator of Conduct Indicating a Need for Supervision (CINS) Probation shall be assigned no minimum length of stay, and with a:

(A) high or medium risk level, assigned to a program of high restriction;

(B) low risk level, assigned to a program of medium restriction.

(e) Program Placement Responsibility. The centralized placement unit shall be responsible for all specific program placement selections/assignments.

(f) Waivers and Exceptions. Waivers and exceptions may be granted under special circumstances.

(1) A restriction level designation, except that of sentenced offender or type A violent offender, may be waived by the director of centralized placement unit or designee when a youth is qualified. A designated restriction may be waived in order to provide specialized treatment or when it is determined that a youth is physically handicapped or has a special medical condition. ~~[not available in the designated restriction when it is determined that a youth is physically/mentally handicapped, has a special medical condition, or is emotionally disturbed.]~~ if such handicap or condition would prevent the youth from functioning in the designated restriction level.

(2) Any placement designation except those of sentenced offenders and type A violent offenders may be waived by the director of the centralized placement unit or designee when population is at or above established capacity.

(3) For waiver of classification, see (GAP) §85.23 of this title (relating to Classification).

(4) For movement for population control see (GAP) §85.29 of this title (relating to Program Completion and Movement).

(g) Parent Notification. Parents/guardians shall be notified of all placements.

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 April 9, 1999.

TRD-9902123

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 424-6244



37 TAC §85.25

The Texas Youth Commission (TYC) proposes an amendment to §85.25, concerning minimum length of stay. The amendment

to the section will eliminate the language that makes certain provisions for youth classified before January 1, 1996, as this information is no longer needed. Disciplinary minimum lengths of stay may be assigned to youth as a disciplinary consequence for certain behavior.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the 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. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance of the most appropriate length of stay requirement for a youth considering safety of the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, concerning determination of treatment, which provides the Texas Youth Commission with the authority to order the youth's confinement under conditions TYC believes best for the youth's welfare and the interest of the public.

The proposed rule implements the Human Resource Code, §61.034.

§85.25. *Minimum Length of Stay.*

(a) Purpose. The purpose of this rule is to establish by policy, a minimum period of time a youth will spend in residential placements (high or medium restriction) having reduced access to the public and which is based on the most serious offense the youth committed. The maximum period of time a youth may spend in residential placement is the total time until he/she reaches age 21. Release from residential placement anytime prior to age 21 is based on the youth's successful completion of release criteria, one of which is the minimum length of time set by the agency.

(b) Applicability.

(1) Except where specifically named, requirements herein do not apply to sentenced offenders. See (GAP) §85.37 of this title (relating to Sentenced Offender Disposition) for additional information. The Texas Youth Commission (TYC) complies with orders of the committing court regarding sentences for youth sentenced to commitment to TYC.

(2) A disciplinary assigned length of stay of up to six months may be assigned in accordance with (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequences).

(c) Explanation of Terms Used.

(1) Minimum Length of Stay (MLS) - the factor in the placement and movement system which is the predetermined minimum period of time a youth will be assigned to live in a residential placement. TYC has established two types of minimum lengths of stay requirements for TYC youth, classification MLS, and assigned disciplinary MLS. This rule primarily addresses classification MLS.

(2) Minimum period of confinement - the period of time established by law that a youth sentenced to commitment in TYC for

offenses occurring on or after January 1, 1996, shall be confined in a TYC residential placement. The minimum period of confinement is the earliest of:

(A) completion of the sentence, or

(B) 10 years for youth sentenced for capital murder; three years for youth sentenced for an aggravated controlled substance felony or a felony of the first degree; two years for a felony of the second degree; and one year for a felony of the third degree.

(3) Classification MLS - a minimum length of stay directly associated with each classification established on initial commitment, for youth recommitted for the commission of a felony or high-risk offense, and for youth found at an administrative level I hearing to have committed a felony or high-risk offense. ~~[Classification minimum lengths of stay of youth classified before January 1, 1996 may include creditable time for events occurring prior to commitment.]~~

(4) Assigned disciplinary MLS - the minimum length of stay assigned to a youth as a disciplinary consequence for behavior. ~~[which may occur anytime a youth is in a residential setting.]~~

(d) Minimum Length of Stay.

(1) Sentenced offenders shall serve the time assessed by the juvenile court, until the earliest of:

(A) release approved by the committing court;

(B) completion of the sentence; or

(C) completion of the minimum period of confinement (for youth committed for acts occurring on or after January 1, 1996 only).

(2) Type A violent offenders must complete a minimum of 24 months.

(3) Type B violent offenders must complete a minimum length of stay of 12 months.

(4) Chronic serious offenders, controlled substances dealers, and firearms offenders must complete a minimum length of stay of 12 months ~~[if classified on or after January 1, 1996 or nine months if classified before that date.]~~

(5) General offenders must complete a minimum length of stay of nine months ~~[if classified on or after January 1, 1996; or six months if classified before that date.]~~

(6) A Violator of Conduct Indicating a Need for Supervision (CINS) Probation has no minimum length of stay.

(e) Creditable Time.

(1) On initial classification, the minimum length of stay shall be counted from the first day a youth reaches any TYC operated or assigned facility.

(2) On recommitment, the minimum length of stay shall be counted from the first day a youth reaches any TYC operated or assigned facility, and any incomplete MLS at the time of recommitment is eliminated; unless:

(A) a youth is recommitted for the same conduct following an appeal of the original commitment, in which case the youth shall be given credit toward completion of the new MLS for any time spent in TYC custody as a result of the original commitment; or

(B) a youth is recommitted for the same conduct for which a level I or II hearing has already been held, in which case the

youth shall be given credit toward completion of the new MLS for the time already served as a result of that level I or II hearing.

(3) On TYC reclassification, if previous classification MLS:

(A) has been completed, the new classification minimum length of stay shall be counted from the date of the most recent due process hearing.

(B) has not yet been completed, the new classification minimum length of stay shall be counted from the completion of the previous MLS.

(4) After the count begins, all time spent in program, on furlough or in detention or jail (except as a disposition in a criminal case) will be counted toward meeting a minimum length of stay requirement.

(5) Time spent as an escapee from a TYC placement or time spent in jail or a court ordered placement in an adult correctional residential program as disposition in a criminal case shall not be counted toward meeting the minimum length of stay requirement.

(f) Creditable Time for Sentenced Offenders.

(1) On initial classification, the minimum period of confinement shall be counted from the first day a youth reaches any TYC operated or assigned facility. Only time spent in a TYC assigned facility shall be credited toward completion of minimum period of confinement.

(2) Sentenced offenders will be credited with days, as assessed by the court, detained in connection with the classifying offense. Time will be credited at the end of the total sentence.

(g) Restrictions.

(1) All minimum lengths of stay will run consecutively except when a youth is recommitted.

(2) Classification MLSs must be completed before any assigned disciplinary MLS begins.

(3) Certain youth ~~[Youth]~~ may be eligible for transition to medium restriction to complete the minimum length of stay requirement in accordance with (GAP) §85.29 of this title (relating to Program Completion and Movement) of Other Than Sentenced Offenders.

(h) Waivers and Reductions.

(1) The classification minimum length of stay requirement may be reduced by the deputy executive director in extenuating circumstances when it is documented that the minimum length of stay is not justified because of the nature of the youth's classifying offense and offense history.

(2) The disciplinary assigned MLS may be reduced in accordance with (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequences).

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 April 9, 1999.

TRD-9902124

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 424-6244

◆ ◆ ◆
37 TAC §85.27

The Texas Youth Commission (TYC) proposes an amendment to §85.27, concerning program restriction levels. The amendment to the section will clarify that emergency shelters are not assigned a restriction level for placement purposes of youth committed to TYC. Youth are assigned to emergency shelters only on a short-term emergency basis until permanent assignments are made. Day-treatment programs are being removed as examples of minimum restriction programs since TYC no longer uses this type of program.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the 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. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance of the most appropriate placement for a youth considering safety of the public and treatment of the youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, concerning determination of treatment, which provides the Texas Youth Commission with the authority to order the youth's confinement under conditions TYC believes best for the youth's welfare and the interest of the public.

The proposed rule implements the Human Resource Code, §61.034.

§85.27. Program Restriction Levels.

(a) Purpose. The purpose of this rule is to categorize programs in which TYC youth may be placed relative to the program's intent to restrict a youth's access to the general community. The level of restriction assists TYC staff in placing youth in the least restrictive most appropriate placement available.

(b) Explanation of Terms Used.

(1) Self-contained Program - a 24 hour supervision program in which the treatment, training and education program is conducted on the premises. A self-contained program is a program without routine unsupervised access to the community, unless otherwise stated.

(2) Routine Unsupervised Access to the Community - a privilege offered by some programs whereby a youth may be absent from the program without staff supervision for 48 hours or more per month prior to the youth's last month in the program.

(3) Staff secure - a staff to youth ratio appropriate to ensure security of high risk youth.

(c) Emergency shelters are not designated with a restriction level.

(d) ~~(e)~~ Levels.

(1) High Restriction - a program which is secured by a perimeter fence. For example:

- (A) TYC training schools;
- (B) intermediate sanctions facilities;
- (C) boot camps;
- (D) Corsicana Residential Treatment Center;
- (E) self-contained residential contract placement designated by TYC as appropriate;
- (F) state hospitals;

(2) Medium Restriction - any residential program which provides routine unsupervised access to the community. For example:

- (A) TYC halfway houses;
- (B) any residential contract program which is not self-contained, e.g., certain substance abuse programs, residential treatment centers, group homes, or organizational foster care;

(3) Minimum Restriction - Any nonresidential program which provides treatment or training at least eight hours per day five days a week, for example, [- For example:] independent living preparation in structured apartments.

~~[(A) day treatment;]~~

~~[(B) independent living preparation in structured apartments.]~~

(4) Home - the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian, or an independent living arrangement, in which there is treatment or training less than eight hours per day, five times a week. For example:

- (A) home or home substitute;
- (B) independent living in any approved location.

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 April 9, 1999.

TRD-9902125

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 424-6244

◆ ◆ ◆
37 TAC §85.29

(Editor's note: The Texas Youth Commission proposes for permanent adoption the repealed section it adopts on an emergency basis in this issue. The text of the repealed section is in the Emergency Rules section of this issue.)

The Texas Youth Commission (TYC) proposes the repeal of §85.29, concerning Program Completion and Movement. This section is being repealed to allow for the publication of a new section.

An identical repeal has been adopted by emergency and is available for public review.

Terry Graham, Assistant Executive Deputy Director of Finance, has determined that for the first five-year period the repeal as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the assurance of the most appropriate residential placement for a youth considering safety of the public and treatment of the youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeal implements the Human Resource Code, §61.034.

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 April 9, 1999.

TRD-9902128

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 424-6244



(Editor's note: The Texas Youth Commission proposes for permanent adoption new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Youth Commission (TYC) proposes new §85.29, concerning program completion and movement of other than sentenced offenders. All references to sentenced offenders in the repealed section have been simultaneously proposed in a new section, (GAP) §85.33 Program Completion and Movement of Sentenced Offenders. For youth committed to TYC, this new rule will establish criteria and procedure for the completion of a TYC treatment program and corresponding eligibility for transition to a program of less restriction, and/or release home or to a home substitute. Movement criteria are based on degree of severity of the offense. When criteria have been met, youth may earn parole status. Certain exceptions may be made for hardship cases, to control population, and for certain mentally ill and mentally retarded youth.

An identical emergency action has been adopted and is available for public review.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the 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. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance of the most appropriate residential placement for a youth considering safety of the public and treatment of the youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new rule is proposed under the Human Resources Code, §61.075, concerning determination of treatment, which provides the Texas Youth Commission authority to discharge the child from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

The proposed rule implements the Human Resource Code, §61.034.

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 April 9, 1999.

TRD-9902129

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 424-6244



37 TAC §85.33

(Editor's note: The Texas Youth Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Youth Commission (TYC) proposes new §85.33, concerning Program Completion and Movement of Sentenced Offenders. The new section addresses the treatment of juvenile offenders sentenced to commitment in TYC. Related information that existed in the repealed rule, (GAP) §85.29 of this title (relating to Program Completion and Movement), is being moved and/or revised in this new rule. Included are criteria for transferring youth to the Texas Department of Criminal Justice (TDCJ) when warranted and for retaining youth in TYC when likewise warranted. Criteria are established for youth completion of program requirements and for eligibility to move to a placement of less restriction. Sentenced offenders are placed in high restriction facilities and must serve their minimum periods of confinement in high restriction prior to consideration for movement to less restriction, unless approved by the court. No youth will be considered for movement from high restriction solely on the basis of having completed the minimum period of confinement. The additional criteria require that each youth has demonstrated competence over all resocialization components including cognitive distortions and behavioral patterns that contributed to the offender's committing offense(s). This new rule contains information regarding youth committed under concurrent determinate sentence and indeterminate commitment orders as previously contained in the repealed section (GAP) §85.35 of this

title (relating to Special Circumstances: Multiple Commitment Orders).

An identical new rule has been adopted by emergency and is available for public review.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the 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. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance of the most appropriate residential placement for a youth considering safety of the public and treatment of the youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The new section is proposed under the Human Resources Code, §61.075, concerning determination of treatment, which provides the Texas Youth Commission authority to discharge the child from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

The proposed rule implements the Human Resource Code, §61.034.

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 April 9, 1999.

TRD-9902131

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 424-6244

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37 TAC §85.35

(Editor's note: The Texas Youth Commission proposes for permanent adoption the repealed section it adopts on an emergency basis in this issue. The text of the repealed section is in the Emergency Rules section of this issue.)

The Texas Youth Commission (TYC) proposes the repeal of §85.35, concerning special circumstances: multiple commitment orders. This section is being repealed and the information regarding youth committed under concurrent determinate sentence and indeterminate commitment orders has been proposed for adoption in a new section (GAP) §85.33 of this title (relating to Program and Movement of Sentenced Offenders).

Terry Graham, Assistant Executive Deputy Director of Finance, has determined that for the first five-year period the repeal as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the assurance of the most appropriate residential placement for a youth considering safety of the public and treatment of the youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeal implements the Human Resource Code, §61.034.

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 April 9, 1999.

TRD-9902133

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 424-6244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 44. Community Care for Aged and Disabled Project CHOICE

The Texas Department of Human Services (DHS) proposes a new Chapter 44, concerning Community Care for Aged and Disabled Project CHOICE, which consists of two client services components of a grant received by the Texas Health and Human Services Commission for Project CHOICE (Consumers Have Options for Independence in Community Environments) from the federal Health Care Financing Administration. DHS proposes new §44.1, concerning Definitions; §44.101, concerning Transition to Life in the Community Client Eligibility Criteria; §44.102, concerning Application for Transition to Life in the Community Benefits; §44.103, concerning Transition to Life in the Community Program Benefits; §44.104, concerning Transition to Life in the Community Client Rights; §44.201, concerning Client Eligibility Criteria for Project CHOICE Presumptive Eligibility Services; §44.202, concerning Period of Presumptive Eligibility; §44.203, concerning Presumptive Eligibility Program Benefits; §44.204, concerning Authorization of Presumptive Eligibility Services; §44.205, concerning Initiation of Presumptive Eligibility Services; §44.206, concerning Provider Billing for Presumptive Eligibility Services; and §44.207, concerning Provider Refusal to Deliver Presumptive Eligibility Services. The pur-

pose of the new chapter is to allow DHS to implement two pilot programs: Transition to Life in the Community (TLC) program which will provide transition grants to individuals in nursing facilities who have been accepted in certain community-based programs, for the costs associated with moving and reestablishing community residences; and presumptive eligibility services which will provide for the initiation of time-limited services through certain community-based programs to applicants who appear to meet the financial and other eligibility criteria pending further verifications.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Bost 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 in the pilot site areas will be that additional resources will be available to help individuals in institutional settings to move to community settings, and that some community-based services may be initiated more quickly to individuals who appear to meet all eligibility criteria by deferring verifications.

The Transition to Life in the Community rules will not have any adverse effects on small businesses because the transition funds will go directly to the individual. The rules for the presumptive eligibility services will guarantee payment to the contracted providers for services which were authorized for individuals who are later determined to be ineligible for ongoing services but will result in a delay in payment until the final eligibility decision. Overall, no adverse economic effects are expected on businesses of any size because of the limited numbers of recipients expected to be able to be served through the grant funds available.

Questions about the content of this proposal may be directed to Randy Wyatt at (512) 438-4807 in DHS's client eligibility section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-143, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas, 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. Definitions

40 TAC §44.1

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§44.1. Definitions.

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

(1) Case manager—An employee of the Texas Department of Human Services (DHS), or of an agency which has contracted with DHS to provide case management services, who provides case management services. The case manager determines eligibility and benefit levels in the Transition to Life in the Community (TLC) Program, subject to final approval by DHS. The case manager also

determines an applicant's eligibility for program services, including presumptive eligibility for limited program services.

(2) CBA—The Community Based Alternatives program, a Medicaid waiver program, based on the Social Security Act, §1915(c), which provides a comprehensive array of community-based services for adults age 21 and older who meet the medical necessity criteria for nursing facility care and who meet all other eligibility criteria for this waiver.

(3) CLASS—The Community Living Assistance and Support Services program, a Medicaid waiver program, based on the Social Security Act, §1915(c), which provides a comprehensive array of community-based services for certain individuals who qualify for an intermediate care facility for the mentally retarded (ICF-MR) VIII level of care and who meet all other eligibility criteria for this waiver. This program operates in designated specific counties in Texas.

(4) Community setting—For persons seeking services through the CLASS or CBA waiver programs, a community setting is any living arrangement chosen by the individual which allows him to receive waiver services from the particular waiver program. A community setting is any long-term living arrangement other than a nursing facility, state hospital, state school, medical, rehabilitation or psychiatric hospital, school for the deaf or blind, Texas Youth Commission facility, Texas Department of Criminal Justice facility, ICF-MR facility, an unlicensed facility, or a licensed personal care facility or adult foster care home which does not contract with DHS to deliver services through the CBA program.

(5) DHS—The Texas Department of Human Services.

(6) Institutional setting—A long-term care nursing facility or ICF-MR Level VIII facility licensed by the Texas Department of Human Services.

(7) Presumptive eligibility—A tentative time-limited approval for an individual to receive limited services through the CBA or CLASS waiver programs or the 1929(b) program pending verification and final determination of eligibility.

(8) Project CHOICE—A grant-funded project (Consumers Have Options for Independence in Community Environments) which provides services in a limited geographic area to individuals who are elderly and persons with disabilities who either reside in institutional settings or who are at immediate risk of institutional placement. Services to eligible individuals will be provided through the TLC program and/or time-limited presumptive eligibility for limited services through the CBA, CLASS, or 1929(b) programs.

(9) TLC—The Transition to Life in the Community program, a component of the Project CHOICE grant program, which provides a one-time financial grant to individuals to help them move from Medicaid-funded placement of at least six months duration in an institutional setting into a community setting.

(10) 1929(b) program—A Community Care to Aged and Disabled program authorized under §1929(b) of the Social Security Act which provides non-technical, medically-related personal care services prescribed by a physician for eligible clients whose health problems cause them to be functionally limited in performing activities of daily living.

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 April 9, 1999.
TRD-9902099

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: May 23, 1999
For further information, please call: (512) 438-3765

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Subchapter B. Transition to Life in the Community Program

40 TAC §§44.101-44.104

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§44.101. Transition to Life in the Community Client Eligibility Criteria.

To be eligible to receive benefits from the Transition to Life in the Community (TLC) program, the individual must meet the criteria specified in paragraphs (1) and (2) of this section.

(1) The individual must meet one of the criteria listed in subparagraphs (A)-(C) of this paragraph:

(A) be accepted for services under the Community Based Alternatives (CBA) program and require the benefits of TLC services in order to move to a setting which is acceptable to the CBA program;

(B) be accepted for services under the Community Living Assistance and Support Services (CLASS) program and require the benefits of TLC services in order to move to a setting which is acceptable to the CLASS program; or

(C) be accepted for services under the Medically Dependent Children Program (MDCP) and require the benefits of TLC services in order to move to a setting which is acceptable to the MDCP program;

(2) The individual must meet all of the criteria specified in subparagraphs (A)-(E) of this paragraph:

(A) not have received prior benefits through the TLC program;

(B) be a Texas Medicaid recipient who resided in a licensed nursing facility or intermediate care facility for the mentally retarded for at least six months;

(C) demonstrate a financial ability to maintain ongoing household expenses after the temporary TLC assistance has been exhausted;

(D) move to a community setting within 60 days of the date eligibility for TLC is determined, otherwise, the application will be denied; and

(E) agree in writing to provide to the Texas Department of Human Services (DHS) receipts for all goods, services, or supplies purchased with program funds and to make restitution to DHS for funds which were not spent and/or were spent for goods, services, or supplies that were not approved by DHS.

§44.102. Application for Transition to Life in the Community Benefits.

(a) An applicant or his authorized representative must complete and sign an application for the Transition to Life in the Community (TLC) benefits to begin the eligibility determination process for the TLC program.

(b) Applications are processed on a first-come, first-served basis according to the date on which the state office of the Texas Department of Human Services is notified that the service plan for Community Living Assistance and Support Services, Community Based Alternatives, or Medically Dependent Children Program services has been developed and that the individual has applied TLC benefits.

§44.103. Transition to Life in the Community Program Benefits.

(a) Transition to Life in the Community (TLC) program benefits are contingent upon the availability to the Texas Department of Human Services (DHS) of special or temporary funds for this program.

(b) Program benefits are available only to individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF-MR) who are leaving the facility and entering the Community Living and Support Services (CLASS), Community Based Alternatives (CBA), or Medically Dependent Children Program (MDCP) waiver programs in a living arrangement allowable in the specific waiver program.

(c) Availability of funds and approval of benefits must be confirmed by DHS before commitment is made to disburse funds.

(d) An individual may receive program benefits only once.

(e) The TLC program will not provide benefits which the individual is eligible and able to receive through any other program.

(f) The TLC program benefits may not include items or services which are included in the reimbursement rate for CBA, CLASS, or MDCP contracted providers.

(g) An eligible individual may receive a one-time grant of up to \$2,500 to pay for the following expenses related to moving and household start-up costs, if the expenses are approved by the case manager and DHS:

(1) expenses directly related to moving, such as the cost of paying others to move household belongings, the cost of moving cartons, and the cost of transporting the individual to the community setting;

(2) rent deposits, limited to the first and last month's rent plus reasonable damage and security deposits;

(3) utility deposits, including deposits required by electricity, gas, water, waste water, telephone, and sanitation companies;

(4) cooking utensils, dishes, cleaning supplies, furniture, appliances, towels, sheets, blankets, and other items needed to set up a household; or

(5) other moving-related expenses and household start-up costs approved by the case manager and DHS.

(h) If individuals accepted into the CLASS, CBA, or MDCP programs will share a common household, the information in paragraphs (1)-(2) of this subsection apply:

(1) If all individuals meet the eligibility criteria, each individual may receive a grant up to the maximum as long as no duplication of expenses occurs.

(2) If only one household member meets the eligibility criteria, only the eligible household member may receive the grant. The ineligible household member's moving-related expenses and household start-up costs may be included in the eligible household member's grant, subject to the \$2,500 limit, provided the ineligible household member is moving to the same community setting as the eligible household member.

(i) Payments may be made directly to the eligible individual, or his authorized representative. The payee must obtain a vendor identification number from the Texas State Comptroller of Public Accounts before payment can be made.

§44.104. Transition to Life in the Community Client Rights.

(a) The individual requesting Transition to Life in the Community (TLC) funds and/or the authorized representative will receive written notification of the eligibility decision for TLC from the case manager. If the individual is determined eligible, the written notice states the amount of the grant the individual will receive.

(b) The individual requesting TLC funds and/or the authorized representative may also request a hearing to appeal the denial of eligibility or the level of benefits if the request is made within 90 days of the date of notification of the eligibility decision.

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 April 9, 1999.

TRD-9902100

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 438-3765



Subchapter C. Presumptive Eligibility Through the Project CHOICE Program

40 TAC §§44.201–44.207

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§44.201. Client Eligibility Criteria for Project CHOICE Presumptive Eligibility Services.

To be eligible through the Project CHOICE (Consumers Have Options for Independence in Community Environments) program for presumptive eligibility benefits of limited program services through the Community Based Alternatives (CBA), Community Living and Support Services (CLASS), or 1929(b) programs, an individual must meet the all of the criteria specified in paragraphs (1)-(11) of this section:

(1) not be currently certified in a Medicaid program which makes the individual financially eligible for the program from which he is requesting services;

(2) submit a completed, signed, and dated application for Medicaid financial eligibility;

(3) be appropriate to consider for services with regard to waiting lists for the program services requested and the availability of program funds; specifically, to bypass the CBA program interest list, an individual must be eligible for presumptive eligibility services, and be able to be served within available Project CHOICE funds;

(4) participate in and cooperate with the Texas Department of Human Services (DHS) staff or contractors in the face-to-face interview and assessment process, including the provision of financial and medical information necessary to make a presumptive eligibility decision;

(5) not have reported income or resources in excess of the thresholds established by DHS;

(6) not have circumstances requiring evaluation of trust(s), annuities, spousal impoverishment or protected resource amount(s);

(7) appear to meet the medical necessity/level of care criteria required by the program for which he is applying;

(8) be determined by case management staff authorized to make presumptive eligibility decisions to be likely to meet all eligibility criteria for the program through which the individual will receive services pending final verification and determination of eligibility;

(9) sign a presumptive eligibility service agreement;

(10) be at risk of institutional placement; and

(11) reside in a Project CHOICE pilot county.

§44.202. Period of Presumptive Eligibility.

The period of presumptive eligibility continues until the final decision regarding eligibility is reached, but in no case will presumptive eligibility services be authorized for more than 90 days, except in the situations of short-term continuation of services to ineligible individuals. Individuals receiving program services through presumptive eligibility who are determined ineligible for ongoing program benefits may continue to receive the presumptive eligibility services for 30 days after the ineligibility decision. Presumptive eligibility services will not be continued beyond the 30-day continuation of benefits period even if the decision of ineligibility is appealed.

§44.203. Presumptive Eligibility Program Benefits.

(a) Presumptive eligibility program benefits are contingent upon the availability to the Texas Department of Human Services (DHS) of special or temporary funds for this program.

(b) Services available through a presumptive eligibility determination are limited to:

(1) personal assistance services, nursing services, and medical supplies (not including prescription drugs) for the Community Living and Support Services waiver program;

(2) personal assistance services, nursing services, medical supplies (not including prescription drugs), adult foster care, and assisted living/residential care services for the Community Based Alternatives program; and

(3) personal assistance services in the 1929(b) program.

(c) Individuals receiving presumptive eligibility services are not eligible to receive Medicaid benefits until and unless a final determination of eligibility for ongoing program services is made.

Individuals receiving presumptive eligibility services will not receive a Medicaid eligibility notification letter.

§44.204. Authorization of Presumptive Eligibility Services.

Texas Department of Human Services staff will authorize contracted program service providers to deliver the limited services identified in §44.203 of this title (relating to Presumptive Eligibility Program Benefits) to individuals determined to be eligible.

§44.205. Initiation of Presumptive Eligibility Services.

(a) Contracted program service providers are expected to expedite the initiation of presumptive eligibility services and must initiate services no later than the day after presumptive eligibility services are authorized.

(b) Verbal physician's orders must be obtained and documented if required for initiation of presumptive eligibility services.

§44.206. Provider Billing for Presumptive Eligibility Services.

(a) The authorized provider will be notified of the final eligibility decision. Any modifications to the authorization or service plan for ongoing services will be completed by the case manager as necessary.

(b) For individuals determined eligible for ongoing program benefits, the contracted provider must submit the billing for services delivered during the presumptive eligibility period through normal billing procedures.

(c) For individuals determined ineligible for ongoing program benefits, the contracted provider must submit the billing for services delivered during the presumptive eligibility period to the state office.

§44.207. Provider Refusal to Deliver Presumptive Eligibility Services.

Contracted providers are required to deliver the limited presumptive eligibility services authorized by the Texas Department of Human Services staff or contract case management staff. Refusal to deliver authorized services will be considered to be a violation of program 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 April 9, 1999.

TRD-9902101

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: May 23, 1999

For further information, please call: (512) 438-3765



Chapter 79. Legal Services

Subchapter L. Fair Hearings

40 TAC §79.1101

The Texas Department of Human Services (DHS) proposes an amendment to §79.1101, concerning Rule and Regulation Authority, in its Legal Services chapter. The purpose of the amendment is to incorporate the uniform fair hearing rules drafted by the Texas Health and Human Services Commission, the Texas Department of Health, the Texas Department of

Mental Health and Mental Retardation, the Texas Rehabilitation Commission, and DHS.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that uniform hearing rules will be used by agencies delivering Medicaid services. There will be no effect on small businesses because the section relates to how DHS conducts client fair hearings. The section does not alter how DHS currently does business, but elaborates on the process. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Barbara Stegall at (512) 438-4878 in DHS's Legal Services section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-001, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§79.1101. Rule and Regulation Authority.

(a) Authority. The statutes creating the Texas Department of Human Services (DHS) grant [the] DHS authority to issue rules and regulations for administering the programs for which it has legal responsibility. The standards for fair hearings apply to all the DHS programs, except as otherwise provided by statute or departmental rules, including clients served through agencies under contract with the DHS.

(b) Statutes creating uniform fair hearing rules. The Texas Health and Human Services Commission (HHSC) is required by state law to promulgate uniform fair hearing rules for all Medicaid-funded services. DHS will follow HHSC's uniform fair hearing rules specified in 1 TAC §357.1 (concerning Purpose and Scope), 1 TAC §357.3 (concerning Definitions), 1 TAC §357.5 (concerning Notice), 1 TAC §357.7 (concerning Maintaining Benefits or Services), 1 TAC §357.9 (concerning Hearing Official), 1 TAC §357.11 (concerning Preliminary Matters), 1 TAC §357.13 (concerning Location of Hearing and Accommodations), 1 TAC §357.15 (concerning Telecommunication), 1 TAC §357.17 (concerning Document Hearing), 1 TAC §357.19 (concerning Privileges), 1 TAC §357.21 (concerning Burden of Proof), 1 TAC §357.23 (concerning Procedural Rights of the Individual), 1 TAC §357.25 (concerning Dismissal of Hearing), 1 TAC §357.27 (concerning Recording), and 1 TAC §357.29 (concerning Hearing Decisions) when conducting fair hearings for Medicaid-funded services.

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 April 9, 1999
1999.

TRD-9902102

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: August 1, 1999

For further information, please call: (512) 438-3765



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter G. Threatened and Endangered Nongame Species

31 TAC §§65.171–65.176

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended and new sections, submitted by the Texas Parks and Wildlife Department have been automatically withdrawn. The amended and new sections as proposed appeared in the October 2, 1998, issue of the *Texas Register* (23 TexReg 9949).

Filed with the Office of the Secretary of State on April 14, 1999.
TRD-9902173



31 TAC §§65.180, §65.181

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed repealed sections, submitted by the Texas Parks and Wildlife Department have been automatically withdrawn. The repealed sections as proposed appeared in the October 2, 1998, issue of the *Texas Register* (23 TexReg 9950).

Filed with the Office of the Secretary of State on April 14, 1999.
TRD-9902172



Part XV. Texas Low-Level Radioactive Waste Disposal Authority

Chapter 450. Planning and Implementation Fees

Subchapter A. Assessment of Fees

31 TAC §§450.1–450.4

The Texas Low-Level Radioactive Waste Disposal Authority has withdrawn from consideration for permanent adoption the proposed amendments to §§450.1–450.4, which appeared in the January 22, 1999, issue of the *Texas Register* (24 TexReg 371).

Issued in Austin, Texas, on April 5, 1999.

TRD-9902036

Lee H. Mathews

Deputy General Manager and General Counsel

Texas Low-Level Radioactive Waste Disposal Authority

Effective date: April 5, 1999

For further information, please call: (512) 451-5292



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 81. Elections

Subchapter E. Miscellaneous

1 TAC §81.86

The Office of the Secretary of State, Elections Division, adopts new §81.86, concerning counting mail and personal appearance early voting ballots prior to election day as authorized in certain elections by §87.0241(b)(2) of the Texas Election Code, with changes to the proposed text as published in the October 9, 1998 issue of the *Texas Register* (23 TexReg 10221).

The new rule is adopted with changes to remove the word "prohibited" from the end of subsection (j). This was a typographical error.

The new rule is adopted to provide procedures for early counting of electronic voting system ballots.

No comments were received regarding adoption of the new rule.

The rule is adopted under the Code, Chapter 31, Subchapter A, §31.003, which provides the Secretary of State with authority to promulgate rules to obtain uniformity in the interpretation and application of the Code, and under the Code, Chapter 122, §122.001(c), which authorizes the Secretary of State to prescribe additional standards for voting systems.

The Code, Chapter 122, §122.001(c) and Chapter 87, §87.0241(b)(2), are affected by this rule.

§81.86. Counting Ballots Prior to Election Day in Counties with a Population of 100,000 or More.

(a) The following procedure to count ballots before election day that were voted by mail or early in person may be used if the following conditions in paragraphs (1)-(7) of this subsection are met:

- (1) the election is conducted by the county elections officer;
- (2) the election is a county election ordered by the Governor, county judge, or commissioners court, a joint election between the county and another political subdivision using the same electronic ballot, or a primary election;
- (3) the county has a population of 100,000 or more;
- (4) electronic system ballots are used in the election;
- (5) tabulation can be completed without revealing the vote count prior to the close of polls on election day;

(6) the second and third logic and accuracy test required by Texas Election Code, Chapter 127 can be performed before the count and after the count;

(7) a real time audit report can be produced immediately after the count to verify the number of ballots counted with the ballot transmittal form.

(b) The central counting station is authorized to convene to count the ballots early.

(c) The manager of the central counting station will determine whether to count the early voted ballots prior to election day.

(d) The manager must notify, in writing, the presiding judge of the early voting ballot board as to the time and place where the presiding judge must deliver the ballots voted early. The notice must be given at least eight days before convening the central counting station. The early voting clerk is sent a copy of the notice.

(e) The early voting clerk must post a notice of time and place on the bulletin board used for posting open meetings where the central counting station personnel will be meeting. The notice must be posted no later than the last day for early voting in person. In the general election for state and county officers, the notice must also be sent to each county chair that has a nominee on the general election ballot.

(f) All tests of the tabulating equipment must be conducted pursuant to the Texas Election Code, Chapter 127, Subchapter D. The testing authority must conduct the second test immediately prior to the count of the early voted ballots.

(g) Poll watchers are authorized to be present during the early count.

(h) The judge of the early voting ballot board must convene the ballot board after the close of early voting in person in order to qualify and prepare the ballots for counting prior to the convening of the central counting station. The presiding judge of the ballot board shall issue a notice of delivery prior to the meeting of the ballot board in the regular manner (Texas Election Code, §87.022 and §87.025). The early voting clerk must post notice of delivery of ballots to the ballot board in the regular manner (Texas Election Code, §87.023). These procedures do not supercede the regular procedures of notice, delivery, and processing of ballots voted by mail by the signature verification committee.

(i) After the count is concluded, the tabulation supervisor must store the vote tabulation on a tape or other electronic device (personal computer) without producing a printout or any other method of the vote count.

(j) The tabulation supervisor must run a report indicating the number of ballots counted for each precinct and do a comparison between those numbers and number of ballots indicated on the ballot transmittal form. This report is used to verify the number of ballots counted since a report showing vote totals is not authorized to be produced prior to election day.

(k) The tabulation supervisor must zero the votes on the tabulation device and run the third test. If the third test is not successful, the count is void.

(l) The counted ballots must be locked in the ballot box and delivered to the custodian. The key to the ballot box must be delivered to the custodian of the key pursuant to the Texas Election Code, Section 66.060.

(m) The box containing the counted ballots may not be opened unless the count of the ballots stored on tape or other electronic means is blank or appears to be incorrect when the tabulation supervisor reloads those results on the computer or accumulator on election day. In that event, the manager of the central counting station shall direct the custodian of the box and the custodian of the key to the box to deliver those items to the central counting station.

(n) The Central Counting Station personnel may convene only once prior to election day to count early votes. Any ballots received after the ballot board judge delivered the ballots to the manager shall be counted on election day.

(o) The central counting station personnel will reconvene on election day at a time determined by the manager. Prior to the start of counting any ballots, the second test must be conducted to determine the tabulating equipment is tabulating correctly. After a successful test has been conducted, the results of the early voting count shall be loaded into the tabulating equipment. The tabulation supervisor must run the same report showing the number of the ballots counted. This report must be compared with the report ran after the conclusion of counting before election day.

(p) If the two reports do not match, the count of the ballots prior to election day is void. The tabulation supervisor shall zero out the votes loaded on the tabulating machine. After a second test is successfully conducted, all ballots counted prior to election day must be rerun.

(q) On election day, the counting of early votes and election day votes shall be conducted in accordance with the procedures set forth in the Texas Election 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 April 8, 1999.

TRD-9902093

Jeff Eubank

Assistant Secretary of State

Office of the Secretary of State

Effective date: April 28, 1999

Proposal publication date: October 9, 1998

For further information, please call: (512) 463-5650

◆ ◆ ◆
1 TAC §81.88

The Office of the Secretary of State, Elections Division, adopts new §81.88, concerning the standards an optical disk or

other electronic storage medium must meet to enable voter registrars to record voter registration applications and other documentation in that storage medium, without changes to the proposed text as published in the October 9, 1998 issue of the *Texas Register* (23 TexReg 10223).

This rule is being adopted to provide voter registrars with another option in retaining voter registration applications and other supporting documentation, in accordance with Section 13.104 of the Texas Election Code (the "Code").

No comments were received regarding adoption of the new rule.

The rule is adopted under the Code, section 13.104, which requires the Secretary of State to prescribe procedures to implement electronic storage of voter registration applications and supporting documentation for those procedures.

The Code, Chapter 13, subchapter D, §13.104 is affected by this proposed rule.

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 April 8, 1999.

TRD-9902094

Jeff Eubank

Assistant Secretary of State

Office of the Secretary of State

Effective date: April 28, 1999

Proposal publication date: October 9, 1998

For further information, please call: (512) 463-5650

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TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 309. Operation of Racetracks

Subchapter C. Greyhound Racetracks

Division 2. Operations

16 TAC §309.353

The Texas Racing Commission adopts an amendment to §309.353, concerning the dismissal of kennels. The amendment is adopted without changes to the proposed text published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 673). The amendment is the result of discussions between agency staff and representatives of the greyhound racetracks and the Texas Greyhound Association. The amendment clarifies the reasons for which a kennel contract may be dismissed from a greyhound racetrack. In order for new kennels to be given a chance at Texas greyhound racetracks, the amendment provides that for five years after a kennel is dismissed, the association cannot book another kennel that is owned substantially by the dismissed kennel's owners.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commis-

sion to adopt rules on all matters relating to the operation of racetracks.

The amendment implements Texas Civil Statutes, Article 179e.

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 April 8, 1999.

TRD-9902087

Paula C. Flowerday
Executive Secretary

Texas Racing Commission

Effective date: April 30, 1999

Proposal publication date: February 5, 1999

For further information, please call: (512) 833-6699



Chapter 321. Pari-mutuel Wagering

Subchapter A. Regulation and Totalisator Operations

Division 2. Mutuel Tickets

16 TAC §321.38

The Texas Racing Commission adopts an amendment to §321.38, concerning the cancellation of mutuel tickets. The amendment is adopted without changes to the proposed text published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 674). This amendment changes the focus of the section from regulating the cancellation of mutuel tickets to the cancellation of win wagers on mutuel tickets. The amendment provides a win wager over \$500 may not be cancelled. The amendment also clarifies when a win wager may be cancelled. Lastly, it provides for the association to post notice of these standards.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering; and §11.011, which authorizes the commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

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 April 8, 1999.

TRD-9902088

Paula C. Flowerday
Executive Secretary

Texas Racing Commission

Effective date: April 30, 1999

Proposal publication date: February 5, 1999

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 231. Administration

Subchapter A. Definitions

22 TAC §231.1

The Board of Vocational Nurse Examiners adopts the repeal of §231.1 relating to Definitions as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1535).

The repeal is adopted to allow for clarification and to establish a numbering system for the definitions in this chapter.

No comments were received relative to the repeal of this rule.

The repeal is adopted under Texas Civil Statutes, Article 4528c, § 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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 April 6, 1999.

TRD-9902042

Mary M. Strange, RN, BSN, CNA
Executive Director

Board of Vocational Nurse Examiners

Effective date: April 26, 1999

Proposal publication date: March 5, 1999

For further information, please call: (512) 305-8100



The Board of Vocational Nurse Examiners adopts new §231.1 relating to Definitions without changes to the proposed text as published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1535). The text of the rule will not be republished.

The rule is adopted to clarify and to establish a numbering system for definitions.

No comments were received relative to the adoption of this rule.

The rule is adopted under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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 April 6, 1999.

TRD-9902043

Mary M. Strange, RN, BSN, CNA
Executive Director

Board of Vocational Nurse Examiners

Effective date: April 26, 1999

Proposal publication date: March 5, 1999

For further information, please call: (512) 305-8100



Subchapter B. General Practice and Procedure

22 TAC §§231.15, 231.30, 231.35, 231.37, 231.38, 231.48, 239.49

The Board of Vocational Nurse Examiners adopts the amendments to §§231.15, 231.30, 231.35, 231.37, 231.38, 231.48, and 231.49, relating to Administration, without changes to the proposed text published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1537).

The rules are amended for clarification, consistency and to reflect changes that have been made to other rules and laws.

No comments were received relative to the amendment of these rules.

The amendments are adopted under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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 April 6, 1999.

TRD-9902044

Mary M. Strange, RN, BSN, CNA

Executive Director

Board of Vocational Nurse Examiners

Effective date: April 26, 1999

Proposal publication date: March 5, 1999

For further information, please call: (512) 305-8100



22 TAC §231.21

The Board of Vocational Nurse Examiners adopts the repeal of §231.21, relating to Election of Officers, without changes to the proposed text published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1537).

The rule was repealed because it was obsolete.

No comments were received relative to the repeal of this rule.

The repeal is adopted under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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 April 6, 1999.

TRD-9902045

Mary M. Strange, RN, BSN, CNA

Executive Director

Board of Vocational Nurse Examiners

Effective date: April 26, 1999

Proposal publication date: March 5, 1999

For further information, please call: (512) 305-8100



Subchapter C. Board Rules

22 TAC §231.64

The Board of Vocational Nurse Examiners adopts the amendments to §231.64 relating to Petition Decision By Board without changes to the proposed text published in the March 5, 1999 issue of the *Texas Register* (24 TexReg 1538).

The rule was amended to correct a typographical error.

No comments were received relative to the adoption of this amendment.

The amendment is adopted under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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 April 6, 1999.

TRD-9902046

Mary M. Strange, RN, BSN, CNA

Executive Director

Board of Vocational Nurse Examiners

Effective date: April 26, 1999

Proposal publication date: March 5, 1999

For further information, please call: (512) 305-8100



Chapter 235. Licensing

Subchapter A. Application for Licensure

22 TAC §§235.4, 235.6, 235.11, 235.17, 235.19

The Board of Vocational Nurse Examiners adopts the amendment of §§235.4, 235.6, 235.11, 235.17, and 235.19, relating to Application for Licensure, without changes to the proposed text as published in the March 5, 1999 issue of the *Texas Register* (24 TexReg 1538).

These rules were amended for clarification, consistency and compliance with law.

No comments were received relative to the adoption of these rules.

The amendments are adopted under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

No other statute, article or code will be affected by this proposal.

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 April 6, 1999.

TRD-9902047

Mary M. Strange, RN, BSN, CNA

Executive Director

Board of Vocational Nurse Examiners

Effective date: April 26, 1999

Proposal publication date: March 5, 1999

For further information, please call: (512) 305-8100

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Subchapter D. Issuance of Licenses

22 TAC §§235.43, 235.45, 235.46

The Board of Vocational Nurse Examiners adopts the amendment of §§235.43, 235.45 and 235.46, relating to Issuance of Licenses, without changes to the proposed text as published in the March 5, 1999 issue of the *Texas Register* (24 TexReg 1539).

The rules were amended for clarification, consistency and compliance with law.

No comments were received relative to the adoption of these rules.

The amendments are adopted under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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 April 6, 1999.

TRD-9902048

Mary M. Strange, RN, BSN, CNA

Executive Director

Board of Vocational Nurse Examiners

Effective date: April 26, 1999

Proposal publication date: March 5, 1999

For further information, please call: (512) 305-8100

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 1. Purpose of Rules, General Provisions

30 TAC §1.5

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §1.5, concerning Records of the Agency, with changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 48). This action is necessary to correct statutory references; to clarify the rule; and to make the rule more accurately reflect the requirements of the Public Information Act, records retention laws, and agency practice.

In addition, the commission is concurrently adopting the repeal of 30 TAC §305.46, concerning confidentiality of certain material. The repeal removes requirements that essentially duplicate those in §1.5. This action is published in this edition of the *Texas Register*.

The commission has also conducted its review of the rules in 30 TAC Chapter 1, as required by the General Appropriations Act, Article IX, §167. The adopted notice of review is concurrently published in the Rules Review section of this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The amendments to §1.5 result from the commission's review of Chapter 1. That review showed the need to delete an inaccurate statutory reference from the current rules and to clarify them. In addition, the commission determined that it was necessary to update the rules to more accurately reflect the Texas Public Information Act, records retention laws, and commission practices.

The changes are made to subsection (d), concerning the confidentiality of information. The subsection provides requirements governing the designation of confidential information. The commission proposed to amend subsection (d)(1) to clarify that the provisions concerning marking of information claimed to be confidential apply only to permit applicants and persons submitting information to the commission in response to a bid solicitation. As discussed in the ANALYSIS OF TESTIMONY in this preamble, the commission has further revised the adopted rule in response to comments to provide that the requirement concerning marking of information claimed to be confidential also applies to a person making a claim of confidentiality under Texas Health and Safety Code, §382.041(a). Other changes to subsection (d)(1) are to delete language concerning availability of the information, as other subsections of the rule address handling of open records requests; and to delete an unnecessary reference to 18 United States Code, §1905. In addition, language concerning the handling of open records requests is added to subsection (d)(2) and (3). The new language lays out conditions under which the executive director would request disclosure determinations from the attorney general. Language concerning the return or withdrawal of information is deleted to make the rule more clearly consistent with state records retention laws (Texas Government Code, Chapter 441, Subchapter L). Other changes are to clarify the language of the rule.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns internal commission practices. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas Water Code, §5.103, requires the commission to adopt rules to carry out its powers, and §5.105 requires the commission to adopt policy by rule.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make minor corrections to statutory references, to add provisions that reflect agency practice concerning certain open records requests, and to make the rule more clearly consistent with state records laws. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this

rule will not burden private real property which is the subject of the rule because it concerns only procedural requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and general agency operations. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the comment period closed on February 1, 1999. No oral comments were received at the public hearing. Written comments were received from Baker and Botts, on behalf of the Texas Industry Project (TIP); BP Amoco Corporation (Amoco); the Texas Chemical Council (TCC); and the Texas Oil and Gas Association (TXOGA).

ANALYSIS OF TESTIMONY

TIP commented that the proposed change to the provisions in §1.5(d)(1), concerning marking of documents claimed to be confidential does not clarify these provisions, but rather narrows the existing rule and might "limit the class of persons or type of information that can be considered confidential." In particular, TIP expressed concern that information submitted to the commission in connection with the agency's air programs might not be kept confidential as a result of the rule change. TIP noted that the Texas Clean Air Act, Texas Health and Safety Code, §382.041, does not limit information that may be claimed to be confidential to information submitted by permit applicants. TIP also suggested that the proposed rule change might prevent companies from making claims of confidentiality under §552.110 of the Public Information Act, Texas Government Code, Chapter 552.

Amoco and TCC also expressed concern that the proposed change to §1.5(d)(1) might prevent businesses from claiming confidentiality for certain types of information submitted in connection with the agency's air programs. Amoco and TCC suggested that the commission delete the proposed new language in §1.5(d)(1), concerning marking of information claimed to be confidential.

TXOGA commented that the proposed change to §1.5(d)(1) "would limit claims of confidentiality to permit applicants and persons responding to a bid solicitation" and would prevent claims of confidentiality for information submitted in connection with agency inspection and emissions inventory processes. TXOGA also suggested that the commission delete the proposed new language in §1.5(d)(1), concerning marking of information claimed to be confidential.

The commission agrees with these comments in part. As an initial matter, the commission notes that the proposed changes to §1.5(d)(1) do not limit the class of persons who may make a claim of confidentiality for information submitted to the agency. As the first sentence of that subsection states, any person who submits information to the commission may request that the information be designated as confidential. The proposed

changes to the rule are simply to specify the circumstances under which information that is claimed to be confidential must be marked as such. The commission agrees that Health and Safety Code, §382.041(a) (Texas Clean Air Act) does not apply only to permit applicants. Any information that is claimed to be confidential under that section must be identified as confidential when it is submitted to the agency. Therefore, the commission has revised the adopted §1.5(d)(1) to include assertions of confidentiality under Health and Safety Code, §382.041(a) in the provision requiring marking of information claimed to be confidential.

TIP commented that the provisions allowing a person to request that information submitted to the agency be returned are not inconsistent with records retention laws and should be kept in the rule. Amoco and TCC also noted that the commission had proposed to delete these provisions. TXOGA commented that it is appropriate to allow a person to withdraw information that has been submitted to the commission, but that "has not and will not be considered by the agency in determining the outcome of (an) application, bid, etc." TXOGA therefore requested that the commission retain the provisions in the rule concerning the withdrawal of information.

The commission disagrees with these comments and accordingly has made no changes to the proposed rule in response. Once information has been submitted to the commission, it becomes part of the agency's records. State agency records may not be destroyed or otherwise disposed of except as allowed by state records retention laws (see Texas Government Code, §441.187 (state agency record may only be destroyed if allowed by agency's approved records retention schedule or if allowed by the Texas State Library and Archives Commission) and §441.191 (state record may not be transferred out of state custody without the consent of the Texas State Library and Archives Commission)). The commission does not believe that these statutory provisions allow the withdrawal of a record that has been submitted to the agency in connection with the transaction of official agency business and is, therefore, a "state record" for purposes of the records retention laws (see Texas Government Code, §441.180(11) (defining "state record")).

Amoco and TCC expressed concern that the commission's rule does not provide "due process" to allow a person claiming that submitted information is confidential "to rebut a determination by TNRCC or the attorney general that the information is not confidential." TXOGA commented that it did not object to the proposed changes to §1.5(d)(2) and (3) concerning requests for an attorney general opinion as to whether information claimed to be confidential must be disclosed, but requested that the rule be revised to state what appeal is available if the attorney general determines that information subject to an open records request is not protected from disclosure.

The commission has made no changes to the rule in response to these comments. As described in the proposed changes to §1.5(d)(2) and (3), if the commission receives a Public Information Act request for information that is claimed to be confidential, the commission does not make the final determination as to whether that information must be disclosed. The Public Information Act, Texas Government Code, §552.304 and §552.305(b), allows any person to submit arguments to the attorney general as to whether information should be released. Any available appeals of attorney general determinations under the Public Information Act are governed by the Act and other law. Therefore,

the commission does not believe it is appropriate to address this issue in its rules.

Amoco and TCC suggested that the commission "take a more affirmative role in determining confidentiality of information" when the agency receives an open records request. Amoco and TCC further suggested that if there continues to be disagreement as to whether information is confidential, the person submitting the information and the commission should attempt to resolve the disagreement through discussions with the attorney general.

The commission has made no changes to the rule in response to these comments. Again, if the commission receives a Public Information Act request for information that is claimed to be confidential, the commission will comply with the Act. The Public Information Act specifies the procedures that must be followed in responding to information requests, and as noted previously, allows any person to submit arguments to the attorney general as to whether particular information is subject to disclosure.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

§1.5. *Records of the Agency.*

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

(d) Confidentiality of information.

(1) A person submitting information to the agency may request that the information be designated as classified data of the federal government, or as confidential. When an applicant, a person making a claim of confidentiality under Texas Health and Safety Code, §382.041(a), or a person submitting a response to a bid solicitation submits classified data or confidential information, each claim of classified data or confidentiality must be made upon submission, and each page must be stamped "confidential." Confidential information may include information relating to trade secrets, secret processes, or economics of operation, or information that if made public would give any advantage to competitors or bidders. It may also include confidential information under 5 United States Code, §552(b)(4), and special rules cited in 40 Code of Federal Regulations, §§2.301-2.309; provided, however, that the composition of any defined waste subject to the jurisdiction of the commission may not be regarded as confidential information.

(2) If the commission or executive director agrees with the designation, the agency will not provide the information for public inspection. If the agency receives an open records request for the information, the executive director will submit a request to the Texas attorney general as provided in subsection (b) of this section for a determination as to whether the information must be disclosed.

(3) If the executive director does not agree with a claim of classified data or confidentiality, the person submitting the information will be notified. If the agency receives an open records request for the information, and the person submitting the information continues to assert a claim of confidentiality, the executive director may submit a request to the Texas attorney general as provided in subsection (b) of this section for a determination as to whether the information must be disclosed.

(4)-(6) (No change.)

(7) For Texas pollutant discharge elimination system applications, information required for the permit application will not be considered confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(8) (No change.)

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 April 9, 1999.

TRD-9902116

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: April 29, 1999

Proposal publication date: January 1, 1999

For further information, please call: (512) 239-1966

Chapter 3. Definitions

30 TAC §3.2

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §3.2, concerning Definitions, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 50). The text of the rule will not be republished. The purpose of this action is to correct and update statutory references within some of the commission's existing definitions.

The commission has also conducted its review of the rules in 30 TAC Chapter 3 as required by the General Appropriations Act, Article IX, §167. The adopted notice of review is concurrently published in the Rules Review section of this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The commission's review of the rules in Chapter 3 showed the necessity of correcting statutory references. The amendments to §3.2, concerning Definitions, correct statutory references in the definitions of "EPCRA," "NEPA," and "SDWA." In addition, the commission made minor formatting changes to conform with *Texas Register* requirements.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission definitions with agencywide application. In addition, the adoption of such rules is expressly required by Texas Water Code, §5.103, which requires the commission to adopt rules to carry out its powers, and §5.105, which requires the commission to adopt policy by rule.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make minor corrections to statutory references. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and general agency definitions. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

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 April 9, 1999.

TRD-9902117

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: April 29, 1999

Proposal publication date: January 1, 1999

For further information, please call: (512) 239-1966



Chapter 5. Advisory Committees

30 TAC §5.5

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §5.5, concerning Composition of Advisory Committees, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 52). The text of the rule will not be republished. This action is necessary to correct a statutory reference in the commission's rules.

The commission has also conducted its review of the rules in 30 TAC Chapter 5, as required by the General Appropriations Act, Article IX, §167. The adopted notice of review is concurrently published in the Rules Review section of this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The amendment to §5.5 changes the statutory reference to reflect the recodification of Vernon's Texas Civil Statutes, Article 6252-33, as Texas Government Code, Chapter 2110, by Senate Bill 898, 75th Legislature, 1997. The need for this minor modification was identified during the course of the commission's review of Chapter 5.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by Texas Government Code, Chapter 2110, which prescribes requirements for state agency advisory committees; and Texas Water Code, §5.103 and §5.105, which require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to make a minor correction to a statutory reference. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of these rules because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and the composition of agency advisory committees. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking. Finally, Texas Government Code, Chapter 2110, prescribes requirements governing advisory committees and also applies.

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 April 9, 1999.

TRD-9902118

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: April 29, 1999

Proposal publication date: January 1, 1999

For further information, please call: (512) 239-1966



Chapter 10. Commission Meetings

30 TAC §10.4

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §10.4, concerning Continuation of Matter Set for a Commission Meeting, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 53). The text of the rule will not be republished. The amendment is recommended as a result of the commission's review of Chapter 10, as required by the General Appropriations Act, Article IX, §167. The adopted notice of review for this chapter is concurrently published in the Rules Review section of this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The amendment to §10.4 authorizes the commission's general counsel to remand a matter from a commission public meeting to the executive director at the request of the executive director or the public interest counsel. This modification would set out in rule certain provisions of a commission resolution from November 25, 1997, which authorized a remand of an item scheduled for a commission public meeting. The resolution is not well known or easily available to the public. Therefore, the commission determined the need to put this provision in its rules. A conforming change is also made to the section's title.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Texas Water Code, §5.103

and §5.105, which require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency processes. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and the conduct of certain actions. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

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 April 9, 1999.

TRD-9902119

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: April 29, 1999

Proposal publication date: January 1, 1999

For further information, please call: (512) 239-1966



Chapter 305. Consolidated Permits

Subchapter C. Application for Permit

30 TAC §305.46

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §305.46, concerning Designation

of Material as Confidential, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 91). The repeal will not be republished.

The repeal is necessary to remove requirements that are duplicated in the commission's general procedural rules, and this action is part of the commission's continuing effort to consolidate its procedural rules.

In addition to this action, the commission adopts a conforming change in 30 TAC §312.11 in this edition of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

The repeal of §305.46 removes requirements that duplicate those in 30 TAC §1.5(d), concerning Records of the Agency. This action is part of the commission's ongoing effort to reorganize, clarify, and consolidate its procedural rules. By consolidating these rules, the commission hopes to eliminate any conflicting procedural requirements and unwarranted non-statutory differences within its rules.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas Water Code, §5.103 and §5.105, require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency processes. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed repeal.

STATUTORY AUTHORITY

The repeal is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, also applies to this rulemaking.

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 April 9, 1999.

TRD-9902120

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: April 29, 1999

Proposal publication date: January 1, 1999

For further information, please call: (512) 239-1966

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Chapter 312. Sludge Use, Disposal, and Transportation

Subchapter A. General Provisions

30 TAC §312.11

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §312.11, concerning Permits, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 92). The text of the rule will not be republished.

The amendment is necessary to correct a reference to 30 TAC §305.46. The commission is concurrently adopting the repeal of that section in this edition of the *Texas Register*. This action is part of the commission's continuing effort to consolidate its procedural rules.

EXPLANATION OF ADOPTED RULE

The amendment to §312.11 removes the reference to §305.46, concerning Designation of Material as Confidential, and replaces it with a reference to 30 TAC §1.5, concerning Records of the Agency. Section 305.46 has been repealed because it duplicates §1.5. The amendment is necessary to ensure that the correct reference is made in the commission's rules. This action is part of the commission's ongoing effort to reorganize, clarify, and consolidate its procedural rules. By consolidating these rules, the commission hopes to eliminate any conflicting procedural requirements and unwarranted non-statutory differences within its rules.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to that statute because it does not meet the definition of major environmental rule as defined in that statute, and it

does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it concerns commission procedural rules. In addition, the adoption of such rules is expressly required by the Administrative Procedure Act, Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas Water Code, §5.103 and §5.105, require the commission to adopt rules to carry out its powers and to adopt policy by rule, respectively.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment of this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rule is to streamline agency processes. Adoption of this rule will substantially advance these purposes by providing specific provisions on these matters. Promulgation and enforcement of this rule will not burden private real property which is the subject of this rule because it concerns the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission. Therefore, the rule is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on February 1, 1999, and the public comment period closed on February 1, 1999.

ANALYSIS OF TESTIMONY

No written or oral testimony was received on the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under the following sections of Texas Water Code: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

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 April 9, 1999.

TRD-9902121

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: April 29, 1999

Proposal publication date: January 1, 1999

For further information, please call: (512) 239-1966



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 357. Regional Water Planning Guidelines

31 TAC §357.4

The Texas Water Development Board (the board) adopts amendment to §357.4, concerning Regional Water Planning Guidelines, without changes to the proposed text as published in the March 5, 1999, issue of the, *Texas Register* (24 TexReg 1580) and will not be republished.

Texas Water Code §16.053 states that regional water planning shall provide for the orderly development, management, and conservation of water resources and response to drought conditions in order, among other factors, to protect the agricultural and natural resources of the region. The amendment will allow for the Texas Department of Agriculture to add a member in an advisory role relating to Senate Bill 1. The placement of a Texas Department of Agriculture non-voting member will provide that agency with appropriate input into the impact of the regional water planning process on agricultural resources.

One comment was received from the Upper Guadalupe River Authority in support of the amendment.

The amendment is adopted under the authority granted in Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas, and under the authority of Texas Water Code, §16.053, which requires the board to develop rules and guidelines to govern procedures to be followed in carrying out the responsibilities in Texas Water Code, §16.053, which responsibilities include designation of representatives for regional water planning areas and procedures for adoption of regional water plans by regional water planning groups.

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 April 8, 1999.

TRD-9902091

Suzanne Schwartz

General Counsel

Texas Water Development Board

Effective date: April 18, 1999

Proposal publication date: March 5, 1999

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



Chapter 363. Financial Assistance Programs

Subchapter H. Groundwater District Loan Program

31 TAC §§363.801-363.811

The Texas Water Development Board (board) adopts new §§363.801 - 363.811 comprising new 31 TAC 363, Subchapter H, establishing the Groundwater District Loan Program, without changes to the proposed text as published in the March 5, 1999,

Texas Register (24 TexReg 1581) and will not be republished. The purpose of the new sections is to implement the provisions of the Texas Water Code, Chapter 36, Subchapter L by governing the board's administration of groundwater district loan assistance, which provides loans for start-up and initial operating costs to newly created districts and authorities which regulate the spacing of water wells and/or the production from water wells.

The new sections provide guidelines for programmatic requirements. Section 363.801 describes the scope of the rules of the new subchapter. Section 363.802 relates to the maximum terms of the loans available and provides notice to potential applicants that loans may not exceed a term of three years. This requirement ensures the revolving nature of the loan program in that loaned funds may quickly be returned to the program so as to be available for lending out again. Section 363.803 relates to criteria and methods for distribution of funds and provides that those borrowers which quickly complete an application will be the most likely to be considered for funding.

Section 363.804 identifies the public entities that are permitted by Constitutional and statutory provisions to apply for financial assistance. Section 363.805, relating to use of funds, provides guidelines for potential applicants of initial operating expenses of the districts that are eligible for funding. Section 363.806 provides notice to potential applicants of the legal and fiscal information from a district that is required for all applications for assistance.

Section 363.807 states the required statutory findings that the board must make in approving an application for financial assistance. Section 363.808 provides for the use of a note and loan agreement as the method by which potential applicants may contract for and pledge repayment of a loan. Section 363.809 provides a list of loan documents that must be executed at the time of closing on the loan. The required documents offer evidence that the applicant is aware of the terms and interest rate of the loan. The required documents also allow the board to assess the applicant's financial ability to repay the loan. The adopted section further requires a documented pledge that the applicant will collect the necessary revenues to repay the loan.

Section 363.810 states the supporting documentation that must be reviewed and assessed before funds are released. Section 363.811 provides notice to applicants that the board will conduct financial audits of all loans during the terms of the loan, and that borrowers must take actions necessary to correct items in noncompliance with the loan agreement.

No comments were received on the proposed new rules.

The new sections are adopted pursuant to Texas Water Code, §6.101 and §36.372, which requires respectively for the board to adopt rules necessary to carry out the powers and duties of the board and to establish rules for the use and administration of the Water Loan Assistance Fund.

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 April 8, 1999.

TRD-9902090

Suzanne Schwartz

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Texas Water Development Board

Effective date: April 18, 1999

Proposal publication date: March 5, 1999

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 18. Nursing Facility Administrators

The Texas Department of Human Services (DHS) adopts the repeal of §§18.2-18.5, 18.7, and 18.8 and new §§18.2-18.5, 18.7, and 18.8. Sections 18.3, 18.4, 18.5, and 18.8 are adopted with changes to the proposed text. The repeal of §§18.2-18.5, 18.7 and 18.8 and new §18.2, and §18.7 are adopted without changes to the proposed text published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11095), and the text will not be republished.

Justification for the repeals and new sections is to establish the organization, terms, and functions of the Nursing Facility Administrators Advisory Committee, alter the academic requirements for licensure by replacing the current 200-clock hour nursing facility administrator's course with 15 academic credit hours in long-term care administration which encompasses all domains of the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB), and place a limit on the number of times an applicant may fail the national and state licensure examinations before being required to obtain additional training. In addition, the provisional license fee has been reduced in order to promote uniform and consistent program fees.

The new sections will function by assuring that applicants seeking licensure as nursing facility administrators receive adequate preparatory training before obtaining a license to practice as a nursing facility administrator. This will improve the quality of care provided to nursing facility residents. The Nursing Facility Administrators Advisory Committee (NFAAC) and the Subcommittee on Education for the NFAAC, which includes representatives from academic, professional, and provider groups, participated in the revisions to these sections. The following responses to public comments are also incorporated by reference into the basis for these rules.

The department received three comments during the comment period regarding adoption of the new sections. The commenters were McLennan Community College, Texas Health Care Association (THCA), and one licensed nursing facility administrator. A summary of the comments and the department's responses follow.

Comment: Regarding §18.2(a)(1), given the new emphasis on the educational requirements, consideration should be given to including an individual from the educational community on the Nursing Facility Administrator Advisory Committee (NFAAC).

Response: Health and Safety Code, Chapter 242, Section 242.303, specifies the composition of the NFAAC. Members of the NFAAC are appointed by the governor. Any change in membership composition will require an amendment to the statute.

Comment: Regarding §18.4(b), does this mean that all documentation has to be received at least 30 days prior to testing? Students acting responsibly by sending in documentation well in advance may be denied the opportunity to test due to slow processing by DPS or the delay on the part of a college or university in providing a transcript at the end of an academic semester.

Response: Yes, all documentation will have to be received at least 30 days before an applicant can take the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB) and state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification in order to ensure the application packet is complete and all supporting documentation is correct. This includes the completed "Texas Criminal Conviction" report that is done by Texas Department of Public Safety (DPS) with accompanying fingerprint card as well as a college transcript that reflects completion of the minimum requirements of a bachelor's degree and completion of 15 academic credit hours in long term care administration or its equivalent, or (until January 1, 2000) the 200- clock hour nursing facility administrator's course or its equivalent that is approved by the Credentialing Department.

Comment: Regarding §18.4(e)(3), will the NFAAC require transcripts from all colleges or universities the applicant has attended or only the final transcript from the degree-granting institution? Will the NFAAC accept proof other than transcripts, that the applicant has received a Bachelor's degree (i.e., institutions are no longer in existence).

Response: The department requires an applicant to provide a transcript from only the degree-awarding institution or other documentation that is acceptable to the department which reflects attainment of a bachelor's degree. In addition, an applicant must provide a transcript which reflects completion of 15 academic credit hours in long-term care administration or its equivalent or (until January 1, 2000) the 200-clock hour nursing facility administrator's course or its equivalent that is approved by the Credentialing Department. The department will consider other proof of attainment of a Bachelor's degree; however, each case will be determined on its own merits.

Comment: Regarding §18.4(e)(4), the courses should specifically focus on long- term care administration because acceptance of generic courses (such as general personnel management or business law) would miss specific competencies related to long- term care administration. Courses should focus on long-term care administration and be so identified by either course title or prefix.

Response: The department does not concur with the comments and recommends adoption of the language as proposed. The department believes that previously completed courses that are equivalent to courses offered in long-term care administration programs should be recognized.

Comment: Regarding §18.4(e)(4), what criteria will be used by the Credentialing Department to determine approval of the long-term care administration courses? Who will do the actual review for approval, what is the process by which the approval will be granted, what will disqualify a course from approval, and how long will approval be valid?

Response: For accredited colleges or universities that plan to begin offering a long- term care administration program consisting of 15 academic credit hours, in consultation with

the NFAAC or the NFAAC Subcommittee on Education, the department will review the course descriptions, course syllabi, and request a list of textbooks, and the curriculum vitae of instructors. The department will inform the college or university of program or course approval or disapproval. Program or course approval will continue as long as the program or course remains consistent with the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB) requirements.

Comment: Regarding §18.4(e)(4), the reference to the "five domains of the NAB" could limit the ability of programs to respond to changing needs in the LTC industry. Delete the word "five" to allow flexibility to respond to change without the need to go through the rule revision process.

Response: The department concurs with the comments and has revised the proposed language at §18.4(e)(4).

Comment: Regarding §18.4(e)(4), the timetable of September 1, 1999, for implementation of 15 academic credit hours in long-term care administration may be unrealistic for colleges and universities to meet.

Response: The department concurs with the comments and has revised the proposed language to extend until January 1, 2000, the timeframe for colleges and universities to convert from the 200-clock hour course to 15 academic credit hours.

Comment: Regarding §18.4(e)(4), if an applicant successfully passes the American College of Health Care Administrators (ACHCA) professional certification exam, will this be used for equivalency purposes for endorsement regarding the 15 academic credit hours required under the proposed rules? Many other states offer reciprocity based on this exam.

Response: Yes, the department will waive the 15 academic credit hours in long-term care administration if an applicant successfully passes the ACHCA professional certification exam. The department recommends adoption of the language as proposed because the department will have the authority to grant waivers as indicated in the proposed rules at §18.5(e).

Comment: Regarding §18.4(e)(5), what will be the requirements for the college- based internship programs? Traditionally, colleges were viewed as filling the role of the preceptor for students enrolled in their programs. Therefore, the individual administrators did not have to independently be certified preceptors.

Response: The department recommends adoption of the language as proposed. Under the previous Texas Board of Nursing Facility Administrators, colleges and universities were allowed to fill the role of preceptor for students enrolled in their programs, even if this entailed only one monitoring visit to the facility in the fall and spring semesters. The department and NFAAC are committed to enhancing the "hands-on" training provided to the administrator-in-training (AIT). Therefore, it is recommended that the AIT complete the 1,000 hour training under the daily supervision of a preceptor who is certified by the department. Colleges and universities will be able to continue monitoring AIT performance and maintain the required documentation regarding the AIT internship. Since the on-sight administrator is ultimately responsible for the training, it is critical that the administrator be a certified preceptor.

Comment: Regarding §18.5, add language to this section that states "this does not apply to currently licensed administrators."

Response: The department does not concur and recommends adoption of the language as proposed in §18.5, "Academic Requirements for Examination and Licensure". A currently licensed administrator has already satisfied the academic requirements necessary to attain a license.

Comment: Regarding §18.5(b), clarification is needed on when this section will be effective. Add "after September 1, 1999" after "An applicant" so the proposed language will state: An applicant, after September 1, 1999, shall complete a minimum of 15 academic credit hours in long term care administration."

Response: The department concurs with the comments regarding the need to include an effective date in the proposed rules for clarification purposes. However, to allow colleges and universities ample time to complete the necessary process required by the Texas Higher Education Coordination Board to modify the long-term care administration course from 200-clock hours to 15 academic credit hours, the department is extending the date of implementation to January 1, 2000.

Comment: Regarding §18.5(e), any evidence submitted by an applicant for purposes of waiving academic or AIT internship requirements should be left to the educational institution. Since the NFAAC will hold colleges and universities responsible for offering courses that meet the criteria of the NAB, it is those academic institutions that should be responsible for determining if a student has met their learning requirements. The credibility of the institution is on the line when it comes to the competency of students.

Response: The department does not concur and recommends adoption of the language as proposed. The department is the licensing authority for nursing facility administrators and is ultimately accountable to ensure that minimal academic and experiential competencies are gained by an individual who seeks to become a nursing facility administrator.

Comment: Regarding §18.5(g), the same failure-retest requirements should be established for the state portion of the licensing exam.

Response: The department concurs with the comments and has made the suggested change at §18.5(g).

Comment: Regarding §18.5(h), it is unclear as to the group of previously licensed nursing facility administrators that are referenced in this section. Clarification is needed in this item.

Response: The department concurs and has revised the proposed language at §18.5(h) to require an applicant who has failed the state examination to repeat the 1,000 hour AIT internship before being allowed to retest.

Comment: Regarding §18.8(a)(1), define substantially equivalent.

Response: §18.8(a)(1) allows the department to grant a provisional license to an individual that is licensed as a nursing facility administrator by another state or other jurisdiction, which has equivalent or substantially equivalent requirements to Texas licensure requirements. The department's determination of whether the requirements of another jurisdiction are substantially equivalent to the requirements established in this chapter must be determined on a case-by-case basis after consideration is given to the documentation submitted by the applicant and other jurisdiction. Therefore, the department recommends adoption of the rules as proposed.

Comment: Regarding §18.8(a)(2), delete this section as it requires a person that is seeking a provisional license to have a bachelor's degree. Without this change, it would be impossible for a person who does not have a bachelor's degree, but has many years of experience as a licensed nursing facility administrator in a state to become licensed in Texas.

Response: The department does not concur and recommends adoption of the language as proposed. With the recommendation of the Nursing Facility Administrators Advisory Committee (NFAAC), the department has established minimal educational and experiential qualifications for individuals seeking to practice in the field of nursing facility administration. A minimum of a bachelor's degree in any subject, is required for both initial and provisional licensure applicants.

Comment: Regarding §18.8(a)(4), clarification is needed that the person is employed as a licensed administrator of record in a licensed nursing facility. Also, change the time period from two years to one year, which is closer to the 1,000 hour requirement.

Response: The department concurs with the comments and has revised the proposed language at §18.8 (a)(4).

Comment: Regarding §18.8(a)(5), this section is too vague; delete §18.8(a)(5).

Response: The department does not concur and recommends adoption of the language as proposed.

In addition, the department added §18.3(b) to inform applicants that effective January 1, 2000, NAB will offer year round computerized testing which will alter the current process of DHS administering the NAB exam.

40 TAC §§18.2–18.5, 18.7, 18.8

The repeals are adopted under the Texas Health and Safety Code, Chapter 242, Subchapter I, (Nursing Facility Administration, §§242.301, added by Acts 1997, 75th Legislature, Chapter 1280, §1.01), which authorizes the department to license nursing facility administrators.

The repeals implement the Texas Health and Safety Code, Chapter 242.302, as added by Acts 1997, 75th Legislature, Chapter 1280, §1.01.

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 April 9, 1999.

TRD-9902134

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: May 1, 1999

Proposal publication date: October 30, 1998

For further information, please call: (512) 438-3765



The new sections are adopted under the Texas Health and Safety Code, Chapter 242, Subchapter I, (Nursing Facility Administration, §§242.301, added by Acts 1997, 75th Legislature, Chapter 1280, §1.01), which authorizes the department to license nursing facility administrators.

The new sections implement the Texas Health and Safety Code, Chapter 242.302, as added by Acts 1997, 75th Legislature, Chapter 1280, §1.01.

§18.3. Application and Licensure Fees.

(a) The Texas Department of Human Services (DHS) shall charge the following fees for a license, license renewal, examination, and administrative fees. The fees shall be as follows:

- (1) Application Fee - \$100;
- (2) National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB) Examination Fee - \$125;
- (3) NAB Re-examination Fee - \$125;
- (4) Initial Licensure Fee - \$250;
- (5) State Examination Fee - \$150;
- (6) Exam Re-test Fee - \$50 per examination;
- (7) Licensure Renewal Fee - \$250 (biennially);
- (8) Formal Inactive Status Fee - \$250;
- (9) Late Renewal Fee - an additional \$75 for renewals made within 90 days of the license expiration date and an additional \$150 for renewals made between 91 and 365 days of the license expiration date;
- (10) Duplicate License Fee - \$25; and
- (11) Provisional License Fee - \$100.

(b) Effective January 1, 2000, DHS shall not administer the NAB examination. NAB shall offer computer-based testing, and fees shall be paid in advance by the applicant directly to NAB.

§18.4. Applicant Requirements for Examination and Licensure.

(a) An applicant seeking licensure as a nursing facility administrator shall submit the required documentation of credentials on official Texas Department of Human Services (DHS) forms.

(b) DHS shall not consider an application as officially submitted until the applicant pays the required fee and accurately completes required forms. An applicant shall not take the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB) examination or the state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification unless completed application form(s) and fees are received at least 30 calendar days prior to the date of the examination.

(c) An application that is submitted to DHS is valid for only one year after the date of receipt. An applicant that fails to meet all requirements for licensure, including successfully passing the NAB examination and state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification during a one-year period, shall be required to submit another application and application fee to DHS.

(d) DHS shall not be responsible for lost, misrouted, or undelivered applications, forms, or correspondence.

(e) An applicant shall submit the following documentation and evidence to DHS:

(1) a completed application that is sworn and notarized before a public notary which contains specific information regarding U.S. citizenship or legal resident status, personal data, employment history, and licensure in other states;

(2) a statement that the applicant has read and agrees to abide by the rules set forth in the Nursing Facility Administrators Licensure Rules Handbook;

(3) an official college transcript that provides evidence of the minimum education requirements of a Bachelor's degree;

(4) proof of completion of a minimum of 15 academic credit hours in long-term care administration or its equivalent which encompasses all domains of the NAB that is approved by the Credentialing Department, or proof of completion of a 200-clock hour nursing facility administrator's course or its equivalent which encompasses all domains of the NAB through January 1, 2000, that is approved by the Credentialing Department;

(5) proof of completion of 1,000 hours in an Administrator-In-Training Internship with a DHS-approved preceptor in a licensed nursing facility with a minimum of 60 beds; and

(6) a completed "Texas Criminal Conviction" report that is performed by the Texas Department of Public Safety with accompanying fingerprint card.

(f) An applicant may submit a curriculum vitae, resume, and/or other documentation of credentials to DHS in addition to the completed application.

(g) DHS shall review any adverse disciplinary action implemented by a state licensing board or authority in the health care profession and/or official court and hearing findings to determine applicant eligibility for licensure.

(h) DHS shall not issue a license to an applicant that has had a nursing facility administrator's license revoked by this or another nursing facility administrator licensure authority, board, or its equivalent.

§18.5. Academic Requirements for Examination and Licensure.

(a) An applicant seeking licensure as an administrator shall have a minimum of a Bachelor's degree in any subject from an accredited college approved by an accrediting association recognized by the Texas Higher Education Coordinating Board.

(b) An applicant shall complete a minimum of 15 academic credit hours in long term care administration or its equivalent, which encompasses all domains of the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB), that is approved by the Credentialing Department or a 200-clock hour nursing facility administrator's course or its equivalent through January 1, 2000, which encompasses all domains of the NAB, that is approved by the Credentialing Department.

(c) An applicant shall complete a minimum of 1,000 hours in an Administrator-in-Training (AIT) Internship with a DHS-approved preceptor in a licensed nursing facility with a minimum of 60 beds.

(d) Degrees and coursework received at foreign universities shall be accepted by DHS only if such coursework is counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. Degrees or coursework that can not be documented because the foreign university refuses to issue a transcript, degree, or other evidence which indicates the attainment of the minimum educational requirements by the foreign applicant shall result in the forfeiture of the original application. The applicant shall submit a new application to DHS with the proper transcripts or transcript evaluation.

(e) DHS staff shall review any evidence submitted by an applicant for purposes of waiving academic or AIT internship

requirements to determine compliance with subsections (a), (b), and (c) of this section.

(f) DHS shall provide an applicant prior notice of eligibility to take the NAB examination and state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification. Applicants shall not be allowed to take the examination(s) unless prior notice of eligibility is provided by DHS.

(g) An applicant who fails the NAB examination or the state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification three times shall be required to repeat the 1,000 hours AIT Internship before being allowed to re-test.

(h) An applicant previously licensed as a nursing facility administrator by passing the comprehensive examination who allows a license to expire or voluntarily surrenders a license shall be required to successfully pass the NAB examination and state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification in order to obtain a current license.

§18.8. Provisional Licensure.

(a) The Texas Department of Human Services (DHS) shall grant a provisional license to an individual that provides evidence of the following:

(1) licensure or registration as a nursing facility administrator by another state or other jurisdiction that has equivalent or substantially equivalent requirements for licensure or registration to the requirements established in this chapter; and

(2) a Bachelor's degree in any subject from an accredited college approved by an accrediting association recognized by the Texas Higher Education Coordinating Board; and

(3) a passing score on the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB) examination; and

(4) employment as the licensed nursing facility administrator of record of a licensed nursing facility for a period of one year; or

(5) employment in an equivalent administrative capacity in a licensed nursing facility or health care setting for a period of one year; or

(6) completion of a 1,000 hour Administrator-in-Training (AIT) program.

(b) An individual that provides proof of completion of the requirements established in subsection (a)(1)-(6) of this section before taking the state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification shall be granted a provisional license.

(c) DHS shall grant a license to a provisional license holder that passes the state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification.

(d) A provisional license that is granted by DHS shall expire 180 days from the date of issuance. DHS may extend the expiration date of a provisional license at its discretion.

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 April 9, 1999.

TRD-9902135

Paul Leche

General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 438-3765



Chapter 45. Community Living Assistance and Support Services

Subchapter D. Fiscal Monitoring

40 TAC §45.401, §45.403

The Texas Department of Human Services (DHS) adopts amendments to §45.401 and §45.403, without changes to the proposed text published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 373).

The justification for the amendments is to delete the failure to use an unapproved substitute form as an administrative error.

Repealing this particular provision will focus the administrative sanctions on the collection of the required data, rather than on the process of obtaining DHS approval for a substitute form. If the provider fails to obtain DHS approval for the substitute form, but collects all of the required data on the substitute form, no administrative error will be cited.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.030 and 32.001-32.042 of the Human 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 April 9, 1999.

TRD-9902136

Paul Leche

General Counsel, Legal Services
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Effective date: May 1, 1999

Proposal publication date: January 22, 1999

For further information, please call: (512) 438-3765



Chapter 46. Licensed Personal Care Facilities Contracting with the Texas Department of Human Services to Provide Residential Care Services

Subchapter H. Administrative and Financial Errors

40 TAC §46.8002

The Texas Department of Human Services (DHS) adopts an amendment to §46.8002, without changes to the proposed text published in the January 22,1999, issue of the *Texas Register* (24 TexReg 374).

The justification for the amendment is to delete the failure to use an unapproved substitute form as an administrative error.

Repealing this particular provision will focus the administrative sanctions on the collection of the required data, rather than on the process of obtaining DHS approval for a substitute form. If the provider fails to obtain DHS approval for the substitute form, but collects all of the required data on the substitute form, no administrative error will be cited.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human 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 April 9, 1999.

TRD-9902137

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: May 1, 1999

Proposal publication date: January 22, 1999

For further information, please call: (512) 438-3765



Chapter 47. Primary Home Care

Subchapter C. Claims Payment

40 TAC §47.3906

The Texas Department of Human Services (DHS) adopts an amendment to §47.3906, without changes to the proposed text published in the January 22,1999, issue of the *Texas Register* (24 TexReg 375).

The justification for the amendment is to delete the failure to use an unapproved substitute form as an administrative error.

Repealing this particular provision will focus the administrative sanctions on the collection of the required data, rather than on the process of obtaining DHS approval for a substitute form. If the provider fails to obtain DHS approval for the substitute form, but collects all of the required data on the substitute form, no administrative error will be cited.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance

programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human 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 April 9, 1999.

TRD-9902138

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Effective date: May 1, 1999

Proposal publication date: January 22, 1999

For further information, please call: (512) 438-3765



Chapter 48. Community Care for Aged and Disabled

Subchapter J. 1915(c) Medicaid Home and Community-based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care

40 TAC §48.6090

The Texas Department of Human Services (DHS) adopts an amendment to §48.6090, without changes to the proposed text published in the January 22,1999, issue of the *Texas Register* (24 TexReg 378).

The justification for the amendment is to delete the failure to use an unapproved substitute form as an administrative error.

Repealing this particular provision will focus the administrative sanctions on the collection of the required data, rather than on the process of obtaining DHS approval for a substitute form. If the provider fails to obtain DHS approval for the substitute form, but collects all of the required data on the substitute form, no administrative error will be cited.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human 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 April 9, 1999.

TRD-9902139

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Effective date: May 1, 1999

Proposal publication date: January 22, 1999
For further information, please call: (512) 438-3765



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

ADOPTED ACTION

EFFECTIVE JUNE 15, 1999

TEXAS DEPARTMENT OF INSURANCE EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF NEW AND/OR ADJUSTED 1998 AND 1999 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance, at a public hearing under Docket Number 2402 held at 9:00 a.m., March 30, 1999 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 1998 and 1999 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0299-01-I) was published in the February 26, 1999, issue of the *Texas Register* (24 TexReg 1399).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability,

and other relevant loss factors for the 1998 and 1999 model years of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0299-01-I, which are incorporated by reference into Commissioner's Order Number 99-0529.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101. This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

TRD-9902141

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: April 12, 1999

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== REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Amended Agency Rule Review Plan

General Land Office

Title 31, Part I

Filed: April 12, 1999



Proposed Rule Review

Texas Board of Architectural Examiners

Title 22, Part I

The Texas Board of Architectural Examiners will review and consider for re-adoption, revision or repeal Title 22, Texas Administrative Code, Chapter 1, Subchapter G (Compliance and Enforcement), Chapter 3, Subchapter G (Compliance and Enforcement), and Chapter 5, Subchapter G (Compliance and Enforcement).

The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

An assessment will be made by the agency whether reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the agency. The review of all rules must be completed by August 31, 2001.

Comments of the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Cathy L. Hendricks, Executive Director/Secretary, Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Box 12337, Austin, Texas, 78701-3942. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9902156

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Filed: April 13, 1999



Adopted Rule Reviews

General Land Office

Title 31, Part I

In accordance with the Appropriations Act, §167, the General Land Office (GLO) adopts without changes its proposed rule review conclusion that the reasons for adopting §§1.11-1.14, relating to Purchase of Excess Acreage, continue to exist and re-adopts without changes §§1.11-1.14, relating to Purchase of Excess Acreage.

The proposed rule review appeared in the February 12, 1999, issue of the *Texas Register* (24 TexReg 1000).

No comments were received regarding this proposed rule review conclusion and the re-adoption.

TRD-9902105

Larry R. Soward

Chief Clerk

General Land Office

Filed: April 9, 1999



Texas Department of Human Services

Title 40, Part I

The Texas Department of Human Services adopts without changes Title 40 TAC, Chapter 17 (relating to Tel-assistance Program), and Chapter 18 (relating to Nursing Facilities Administrators) pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The proposed review was published in the March 5, 1999, issue of the *Texas Register* (24 TexReg 1641).

No comments were received regarding the review.

TRD-9902140

Paul Leche

General Counsel

Texas Department of Human Services

Filed: April 12, 1999



Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) adopts the review of the rules in 30 TAC Chapters 1, 3, 5, 10, 20, and 40, concerning Procedural Rules. This review complies with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed notice of review was published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 172).

The commission readopts the following rules: 30 TAC Chapter 1, concerning Purpose of Rules, General Provisions; 30 TAC Chapter 3, concerning Definitions; 30 TAC Chapter 5, concerning Advisory Committees; 30 TAC Chapter 10, concerning Commission Meetings; 30 TAC Chapter 20, concerning Rulemaking; and 30 TAC Chapter 40, concerning Alternative Dispute Resolution Procedure, as required by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission reviewed the rules in each of these chapters and determined that the reasons for adopting these rules continue to exist. The rules are necessary to establish general

commission procedures, as required by Texas Government Code, §2001.044. These rules are also necessary to prescribe certain commission procedural requirements for general agency operations, commission advisory committees, commission meetings, commission rulemaking activities, and alternative dispute resolution.

The commission concurrently adopts amendments to §§1.5, 3.2, 5.5, and 10.4 in the Proposed Rules section of this issue of the *Texas Register*. The changes were identified during the course of the commission's review and primarily correct statutory references and make clarifications. In addition, the commission adopts conforming changes in 30 TAC Chapters 305 and 312 in this edition of the *Texas Register*. The specific changes are noted in the proposed rule preamble for each action.

The comment period for the review closed on February 1, 1999. No comments were received on the proposed notice of review.

TRD-9902155
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 13, 1999



TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is 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. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

Figure: 1 TAC §72.50(1)



Figure: 1 TAC §72.50(2)



Figure: 1 TAC §72.50(3)



Texas Low-Level Radioactive Waste Disposal Authority
 Chapter 450. Planning and Implementation Fees

Figure: 31 TAC 450.3(a)

	FY 1999
South Texas Project Nuclear Operating Company	\$1,857,898.50
Texas Utilities as owner of the Comanche Peak Project	<u>\$1,857,898.50</u>
	<u>\$3,715,797.00</u>
	[FY 1998
South Texas Project Nuclear Operating Company	\$2,130,128
Texas Utilities as owner of the Comanche Peak Project	<u>\$2,130,128</u>
	<u>\$4,260,256]</u>

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, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission for the Blind

Request for Proposal for Rehabilitation Project Grants

Ernest Pereyra, Deputy Director, Administration and Finance, has announced the availability of funds for projects for providing services to individuals who are blind or severely visually impaired.

Purpose of Program: To provide financial assistance to nonprofit organizations and public agencies to pursue projects to support or provide vocational rehabilitation services to individuals who are blind or severely visually impaired in one or more of the following funding priorities:

Category 1—Establish or expand career opportunities/programs for teenagers in transition from school into employment.

Category 2—Research and develop a model for informed choice practices and procedures for the Texas Commission for the Blind. This proposal must include a methodology to provide vendor information via a database.

Category 3—Research and develop a model for self-employment practices and procedures for the Texas Commission for the Blind.

Category 4—Develop new and innovative strategies to assist individuals in obtaining competitive employment.

Estimated Range of Awards: \$50,000-\$300,000. (Note: The Commission is not bound by any estimates in this notice.)

Approximate matching requirements: 22% or more match of the project is expected, unless some funds are used for construction. Projects which involve construction as part of the project must match at least 50% of the construction cost.

Maximum Award: In no case will the Commission make an award greater than \$300,000 for a single budget period of 12 months. The Commission rejects and does not consider an application that proposes a budget exceeding this amount.

Project Period: Up to 24 months.

Deadline for Transmittal of Applications: Applications must be received at the Texas Commission for the Blind no later than June 4, 1999.

To Request Applications or Make Inquiries: All inquiries should be directed to Bill Agnell, Program Specialist, Texas Commission

for the Blind, 4800 N. Lamar, Suite 220, Austin, Texas 78756, or phone (512) 459-2586, or e-mail: billa@tcb.state.tx.us. The preferred method for requesting applications is to FAX your request to Bill Agnell at (512) 459-2592.

TRD-9902184

Terrell I. Murphy

Executive Director

Texas Commission for the Blind

Filed: April 14, 1999

Central Texas Workforce Development Board

Request for Proposals

The Central Texas Workforce Development Board (CTWDB), administrative entity for its contractor, the Central Texas Council of Governments (CTCOG) is soliciting proposals for CCMS Services and Child Care Quality Initiatives. CTWDB serves the Central Texas Service Workforce Development Area consisting of the following counties: Bell, Coryell, Lampasas, Milam, Mills, Hamilton, and San Saba. The CTWDB plans and oversees workforce programs under Federal and State funding sources.

Proposal specifications may be obtained from the offices of CTWDB by contracting Mark Collier at (254) 939-3771, extension 212 or at 200n North Main, P.O. Box 450, Belton, Texas, 76513, beginning Monday, April 19, 1999.

A Bidder's Conference will be held to respond to any questions concerning the Request for Proposal. The conference will take place at 100 Davis, Belton, Texas on April 19, 1999 at 10:00 a.m. One original and four copies of the proposal must be submitted to the CTWDB by 5:00 P.M. on May 21, 1999.

The CTWDB reserves the right to accept or reject any or all bid/proposals received as a result of this request, to negotiate with all qualified vendors, or to cancel in part or, in its entirety, this Request for Proposal if it is in the best interest of the CTWDB.

CTWDB encourages historically underutilized businesses to request and respond to all Request for Proposals.

TRD-9902098

Susan Kamas

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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. Requests for federal consistency review were received for the following projects(s) during the period of April 1, 1999, through April 8, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Vintage Petroleum, Inc.; **Location:** The proposed project is in the Trinity Bay at Vintage Petroleum's Point Barrow Terminal, 9738 Point Barrow Road, and in Trinity Bay fronting Exxon USA property and McCollum County Park, near Baytown in Harris County, Texas. The sites can be located on the U.S.G.S. Umbrella Point, Texas, quadrangle map; **Project Number:** 99-0134-F1; **Description of Proposed Action:** The applicant has requested a 10-year extension of the maintenance dredging period authorized by Permit Number 1456. The permit expired on January 1, 1995. The applicant has also requested to add a new dredged material placement area (PA) to the permit, since the previously used PA is full. Vintage Petroleum's 120-foot by 1,500-foot access channel and 305-foot-long basin support Vintage Petroleum's well-maintenance operations. The access channel and basin would be hydraulically dredged to a depth of 7 feet below mean low water. Currently, there is an immediate need to dredge approximately 23,000 cubic yards of mostly fine sandy sediment from the channel and basin. Thereafter, approximately 23,000 cubic yards of sediment would be dredged at three-year intervals. The proposed placement site is a 2,200-foot-long by 100-foot-wide area extending bayward from bulkheads at the Trinity Bay shoreline of Vintage Petroleum's Point Barrow Terminal, adjacent Exxon USA property, and Chambers County's McCollum County Park; **Type of Application:** U.S.A.C.E. permit application #01456(05) 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).

Applicant: McFaddin Marsh National Wildlife Refuge; **Location:** The project is located in Wild Cow Bayou Marsh, near Clam Lake Oil Field Road, McFaddin National Wildlife Refuge, Jefferson County, Texas; **Project Number:** 99-0135-F1; **Description of Proposed Action:** The applicant is requesting authorization to modify permit 16360(01) to deepen three additional small boat access channels. The ditches have silted in and grown over with vegetation. The applicant would like to open the ditches to increase boating opportunities in Wild Cow Bayou Marsh and the McFaddin (NWR). The existing ditches are approximately 4.5 feet wide and 1-foot deep. The applicant proposes to deepen the ditches to 2 feet and 6 feet wide. The material will be excavated and placed approximately 6 feet from the edge of the ditch. Ditch H will be approximately 2,000 feet long, ditch J will be approximately 1,000 feet long, and ditch F will have two separate sections; a) approximately 1,600 feet long and b) approximately 2,900 feet long. The total distance of the excavation will be approximately 7,500 feet long and will impact approximately 45,000 square feet; **Type of Application:** U.S.A.C.E. permit application #16360(02) 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).

Applicant: Oly-Galveston, G.P.; **Location:** The project is on a 35.882-acre tract known as Parcel K (Laffite's Landing), owned by Oly-Galveston, G.P., and located between Stewart Road and Farm-To-Market Road (FM) 3005, and between Eleven Mile Road and Twelve Mile Road, just south of the Lafitte's Cove residential area, in the city of Galveston, Galveston County, Texas; **Project Number:** 99-0136-F1; **Description of Proposed Action:** The applicant proposes to amend Department of the Army Permit Number 17800 to fill .98 acres of two coastal swale wetlands during construction of a 1,350-foot extension of Eckert Drive from Stewart Road, across the subject tract, to FM 3005. The proposed project also includes widening and deepening of an existing drainage ditch adjacent to the proposed road to create a 2.62-acre waterway with enhanced habitat features as mitigation for wetland impacts and to continue to collect drainage from FM 3005; **Type of Application:** U.S.A.C.E. permit application #17800(05) under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Oiltanking Houston, Inc.; **Location:** The project is located on the Houston Ship Channel, near Boggy Bayou Basin, at Corps of Engineers Station 660+00, northeast of Pasadena, in Harris County, Texas; **Project Number:** 99-0137-F1; **Description of Proposed Action:** The applicant proposes to amend Permit Number 19427(03) to include the construction and maintenance of a finger pier, and the construction of mooring and breasting dolphins. In addition, the applicant seeks authorization to mechanically and hydraulically dredge a mooring basin to provide a safe docking area. The mooring basin will be dredged to a depth of -15 feet NGVD. Approximately 400,000 cubic yards of mechanically dredged material will be placed in an on-site upland placement area. The applicant requests authorization to place approximately 1,400,000 cubic yards of hydraulically dredged material in the Lost Lake, Glanville, Peggy Lake, Greens Bayou, Clinton, East and West Jones, and/or Alexander Island Placement Areas, or in the San Jacinto State Park marsh; **Type of Application:** U.S.A.C.E. permit application #19427(04) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: The George R. Brown Partnership; **Location:** The project site is located in adjacent wetlands, approximately 4,000 feet north of the Neches River, south of Interstate Highway 10, near Beaumont, Orange County, Texas. The U.S.G.S. quad map is Beaumont East; **Project Number:** 99-0138-F1; **Description of Proposed Action:** The applicant proposes to construct a well for the production of oil and gas. The project would require the placement of approximately 11,500 cubic yards of fill into wetlands for the construction of a well pad, ring levee and entrance road. Approximately 2 acres of freshwater cattail marsh and approximately 0.2 acres of bottomland hardwoods would be impacted by the project; **Type of Application:** U.S.A.C.E. permit application #21575 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Kacy Chemical, Inc.; **Location:** The project is located on the Gulf Intracoastal Waterway (GIWW), on the northeast side of State Highway 124, at the foot of the bridge over the GIWW, in High Island, Chambers County, Texas; **Project Number:** 99-0139-F1; **Description of Proposed Action:** The applicant proposes to mechanically dredge a 200-foot-wide by 485-foot-long barge slip. The slip will be 10 feet deep. The initial dredge material, approximately 17,500 cubic yards, will be hauled to an off-site upland placement area. The proposed placement area is located approximately 2 miles south of the project site. The applicant also requests authorization to perform routine maintenance dredging in the slip for a period of 10 years. In addition, the applicant proposes to retain and repair an existing 485-

foot-long dock. Furthermore, the applicant proposes to remove two 7-cluster piles located approximately 150 feet and 250 feet from the existing dock, and install five new 5-cluster piles; Type of Application: U.S.A.C.E. permit application #21608 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 for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-9902176
Larry R. Soward
Chief Clerk
Coastal Coordination Council
Filed: April 14, 1999



Comptroller of Public Accounts

Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the February 12, 1999, issue of the *Texas Register* (24 TexReg 1074).

The consultant will assist the Comptroller in conducting a management and performance review of the Killeen Independent School District, produce periodic progress reports and assist in producing a final report.

The contract is awarded to McConnell, Jones, Lanier and Murphy, L.L.P., Summit Tower, 11 Greenway Plaza, Suite 2902, Houston, Texas 77046. The total dollar value of the contract is not to exceed \$200,000.00. The contract was executed April 6, 1999, and extends through October 31, 1999. McConnell, Jones, Lanier and Murphy will assist the Comptroller in preparing a final report which will be made public on or about September 17, 1999.

TRD-9902114
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: April 9, 1999



Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring a consultant to assist in conducting a performance review of El Paso Community College. From this review, recommendations will be developed for containing costs, improving management strategies, improving operations and ultimately promoting better education for

El Paso Community College students through management efficiency and accountability. The successful proposer will be expected to begin performance of the contract on or about June 24, 1999.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th St., Room G-24, Austin, Texas 78774, Clay Harris, (512) 305-8673, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above referenced address on Friday, April 23, 1999 between 4 p.m. and 5 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 4 p.m. (CZT) on Friday, May 14, 1999.

Closing Date: Proposals must be received in the Legal Counsel's Office no later than 1 p.m. (CZT), on Tuesday, May 25, 1999. Proposals received after this time and date will not be considered.

Award Procedure: Proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. Each committee member will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

Schedule of Events: The anticipated schedule of events is as follows~ Issuance of RFP - April 23, 1999, 4 p.m. (CZT); Mandatory Letter of Intent and Questions Due - May 14, 1999, 4 p.m. (CZT); Proposals Due - May 25, 1999, 1 p.m. (CZT); and Contract Execution - June 15, 1999, or as soon thereafter as practicable.

TRD-9902154
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: April 13, 1999



Deep East Texas Workforce Development Board, Inc.

Fiscal Audit Request For Proposal

Part 1 GENERAL INFORMATION

1.1 Purpose

The Deep East Texas Local Workforce Development Board, Inc. (DETWDB), a non-profit entity, is soliciting proposals from interested parties for professional, Financial and compliance audit services of Federal funds as required by OMB circular A-133.

Such services include an audit of approximately \$12,000,000, which shall be performed in accordance with state policy and Federal regulations including the Single Audit Act of 1996 and OMB Circular No. A-133.

This RFP contains the technical specifications, which define the services solicited herein, as well as, the standards and requirements for this procurement.

Part 1, General information, provides both general background and specific requirements governing the administration of this procurement.

Part 2, Scope of this Request, describes the specific services and performances criteria for which (DETWDB) will accept competitive bids.

Part 3, Instructions for Preparation and Submittal of Proposals, provides the required information and format necessary for preparation and submittal of a responsive bid. This information must be completed as specified.

Part 4, Attachments, provides the required forms and additional instructions and information necessary for preparation and submittal of a responsive proposal.

1.2 Background

The mission of the DETWDB is to increase the involvement of the business community, including small business, minority business enterprises, and labor organizations in employment and training activities and to increase private sector employment opportunities for economically disadvantaged persons. Specifically to operate and administer the Job Training Partnership Act programs in the DETWDB Service Delivery Area. The DETWDB provides employment services and training to a twelve county area including Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity and Tyler counties. The DETWDB staff is comprised of approximately six employees on a full-time basis. The staff consists of an Executive Director, Planner, Contract Manager-Childcare, a Contract Manager-TANF/FSE&T/WTW/WIA, Contract Manager-Fiscal and an Administrative Assistant. The DETWDB administers the following programs: Job Training Partnership Act Titles Title IIC- Funds allocated for the year-round youth program.

Title IIA- Funds allocated to serve adults

Title IIB- Funds allocated to provide summer employment training to youth

Title III- Funds provided under the Economic Dislocation and Worker Adjustment Assistance Act for persons who have lost jobs due to layoffs or plant closings.

8.0% Literacy-Special allocation of funds to provide delivery of a basic literacy skills training.

5.0% Incentive Funds- Funding based on past program year performance standards and available for IIA and IIC capacity building and technical assistance activities. Other Programs

Food Stamp Employment and Training Services- Funds are used to reduce client dependency on Food Stamps by helping them achieve economic self-sufficiency. Childcare Management System-Federally funded program for providing subsidized childcare too economically disadvantaged persons.

TANF- Funds are used to reduce client dependency on public cash assistance by helping them achieve economic self-sufficiency.

1.3 Administration of This Request For Proposal (RFP)

Funds Available: All awards are contingent upon the availability of funds from the Texas Workforce Commission.

Audit Period: October 1, 1998-March 31, 1999

Procurement Standards: Procurement for an audit firm shall be in compliance with Federal Circular A-102, Procurement Standards, and the provisions of applicable Federal Law or Executive Orders, as well

as, state and local policies and for procurement. Solicitation via this RFP shall ensure services are obtained efficiently and economically while maintaining maximum full and open competition.

Technical Assistance: Only Fiscal Department staff will answer those questions pertaining to clarification of the RFP. Accounting records and prior years audit reports are available for review at the DETWDB-Fiscal Agent's office located 274 East Lamar, Jasper, Texas.

When audit fieldwork begins, Fiscal Agent and staff will be available to prepare schedules, pull reports and produce documents as needed.

A. Method of payment

Payment shall be made for services rendered and billed by the Contractor and received by DETWDB.

B. Governing Provisions and Limitations

1) A response to the Request For Proposal (RFP) does not commit Deep East Texas Workforce Development Board to a purchase agreement or contract, or contract or to pay any costs incurred in the preparation of such response.

2) DETWDB reserves the right to accept or reject any or all proposals received, to cancel this RFP in part or its entirety, and to reissue this RFP.

3) DETWDB reserves the right to hold, and accept a proposal for a period of 30 working days after the response deadline.

4) DETWDB reserves the right to negotiate the final terms of any and all purchase agreements with bidders selected and such agreements negotiated as a result of this RFP may be renegotiated and/or amended in order to successfully meet the needs of the audit contract.

5) DETWDB reserves the right to waive any defect in this procurement process or to make changes to this solicitation as it deems necessary.

6) DETWDB will provide notifications of such changes to all bidders of record (Distribution Log/Receipts Record) as having received or requested an RFP.

7) DETWDB reserves the right to contact any individual; agencies or employers listed in a proposal, to contact others who may have experience and/or knowledge of the bidder's relevant performance and/or qualifications; and to request additional information from any and all proposers.

8) DETWDB also reserves the right to conduct a review of systems, procedures, etc. of any bidder selected. This may occur prior to, or subsequent to the award of a purchase agreement. Misrepresentation of the proposer's ability to perform as stated in the proposal may result in cancellation of the purchase agreement.

9) Proposers shall not, under penalty of law, offer or provide any gratuities, favors, or anything of monetary value to any officer, member, employee, or agent of the Deep East Texas Workforce Development Board for the purpose of or having the effect of influencing favorable disposition toward their own proposal or any other proposal submitted hereunder.

10) No employee, officer, or agent of DETWDB shall participate in the selection, award, or administration of a contract supported by TWC funds if a conflict of interest, real or apparent would be involved. (See OMB Circular A-102, Attachment 0, Procurement Standards, Code of Conduct.)

11) Proposers shall not engage in any activity, which will restrict or eliminate competition. Violation of this provision may cause a

proposer's bid to be rejected. This does not preclude joint ventures or subcontracts.

12) The only purpose of this Request for Proposal (RFP) is to ensure uniform information in the solicitation of proposals and procurement of auditing services. This RFP is not to be construed as a purchase agreement or contract as a commitment of any kind, nor does it commit DETWDB to pay for costs incurred prior to the execution of a formal contract.

13) The contents of a successful proposal may become a contractual obligation, if selected for award of a contract. Failure of the proposer to accept this obligation may result in cancellation of the award. No pleas of error or mistake shall be available to successful proposer(s) as a basis for release of proposed services at stated price/costs. Any damages accruing to DETWDB as a result of the proposer's failure to contract may be recovered from the proposer.

14) The Texas Workforce Commission is the responsible authority for handling complaints or protests regarding the proposal selection process. No protest shall be accepted by the grantor agency (State) until all administrative remedies at the grantee level have been exhausted. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law shall be referred to such authority, as may have proper authorization.

15) Solicitation and selection of proposals must conform to relevant state and federal laws and regulations and local policies governing the procurement of supplies, equipment, and services under state and federal guidelines. Bidders are responsible for familiarizing themselves with these laws and regulations.

C. Proposer Selection Process

The primary consideration in selecting a provider of auditing services shall be its effectiveness in delivering comparable or related services as based on demonstrated performance. The proposal review process will include: evaluation, rating, and ranking of proposals by DETWDB staff and or independent outside reviewers; review and recommendation for selection of proposals by DETWDB Board of Director's Planning and Budget Committee approval and selection for award of contract by the DETWDB Board.

The following shall apply to the selection process:

- 1) All proposals considered must be received on time and be responsive to the RFP instructions.
- 2) Where the quality of two or more proposals are equal cost will become a primary factor in the selection of a contractor.
- 3) Award may be made to the responsible bidder whose proposal will be most advantageous to the programs administered by the DETWDB and its organization.
- 4) Positive efforts shall be made to utilize small, minority, and female owned or operated organization/business (HUB) in the procurement and provisions of these services.
- 5) Awards of contracts shall be made only to Responsible Providers. DETWDB may base its selection on the following, including but not limited to: mandatory criteria for professional qualification; a satisfactory record of past performance; provider's integrity and business ethics; accountability; financial stability; technical resources; and the provider's ability to meet performance and design criteria; the quality of the proposed services; and the reasonableness of the price/cost.

The specific evaluation criteria are provided in Part 4.1 of this request.

D. Contractor's responsibilities

Provider selected will be required to assume full responsibility for all services provided.

Part 2 SCOPE OF THIS REPORT

2.1 Audit Criteria and Technical Requirements

A. Audit Requirements

The following current publications and guidelines shall govern:

1. The Single Audit Act of 1996:
2. American Institute of Certified Public Accountants (AICPA) Industry Audit Guide, Audits of State and Local Government Units;
3. Government Auditing Standards, Controller General of the nited States
4. Financial Accounting Standards Board (FASB) Statement of Positions 80-2, Accounting and Financial Reporting by Government Units;
5. OMB Circulars A-21,A-50,A-87,A-102,A-110,A-122,A-128,A-133;
6. OMB's Compliance Supplement for Single Audits of state and local governments;
7. The Texas Workforce Commission Financial Management Manual, JTPA Issuance's, and JTPA Official Notification, the state compliance and resolution monitoring guides.
8. Financial/Programmatic Monitoring Reports, Incident Reports, Investigative Reports of the Office of Inspector General, which may have potential audit implications; and
9. JTPA Act and the Federal Regulations
10. DETWDB Policies and Procedures
11. HB 1863
12. TWC Financial Manual For Grants and Contracts
13. U.S. Department of Agriculture 7 CFR
14. Title IV-A and IV-F of the Social Security Act
15. U.S. Department of HHS 45 CFR 74 & 92

B. Description of the Entity and Records to be Audited

The DETWDB contracts with Deep East Texas Council of Governments to provide the Fiscal Agent criteria as defined in the TWC Financial Manual for Grants and Contracts. The Fiscal Agent's responsibilities are as follows:

Fiscal Agent is responsible for the following:

1. Develop internal controls to ensure that the following objectives will be met (TWC FMGC 3.05; DETWDB Policies and Procedures 1.02,1.04,1.05)
 - a. Protect and account for resources
 - b. Prevent wasteful/unnecessary expenditures or the creation of liabilities
 - c. Restrict liabilities, obligations and expenditures of funds to those authorized
 - d. Properly account for revenues
 - e. Monitor the efficiency, accuracy and effectiveness of operations and appropriation

2. Shall ensure that the following objectives are achieved when paying liabilities and recording disbursements (TWC FMGC 3.06)

- a. Purchases are approved in writing and in advance of purchase
- b. Documentation substantiating approval is maintained for each order or purchase
- c. Procurement documentation is maintained that substantiates that needed goods and services are purchased at the best possible value. Exceptions to this rule shall be justified in writing and maintained in the procurement file.
- d. A complete audit trail exists for each purchase. An audit trail includes, but is not limited to, an approved purchase order or requisition request, receiving report, vendor's invoice and a concealed check for each voucher or payment.
- e. Limited authorized personnel are responsible for check signing
- f. Each check should be reviewed to ensure the name of the payee and amount of the invoice agrees with those on the check.
- g. To prevent duplication of payment, invoices should be stamped Paid or similar method of cancellation shall occur when checks are signed and payments are received.
- h. Checks should not be made payable to cash or bearer, nor should blank checks be issued
- i. Checks should not be valid 90 days after issuance. This should be denoted on each check
- j. Access to blank checks and to signature plates, if used, shall be limited to authorized personnel
- k. Trial balances should be prepared monthly
- l. Bank accounts should be reconciled monthly
- m. Payroll must be supported by time and effort records and disbursed in a secure manner
- n. Detailed reports of expenditures will be submitted monthly to the Board

3. Shall ensure a cash management system (TWC FMGC Chapter 13.07, DETWDB Policies and Procedures 3.01,3.02,3.03)

4. Shall ensure a cost allocation plan (TWC FMGC Chapter 11, DETWDB Policies and Procedures 4.01)

5. Shall ensure the accuracy of disbursements and payables (TWC FMGC Chapters 3 & 5, DETWDB Policies and Procedures 5.01,5.02, 5.03)

6. Shall ensure a cash request procedure (State of Texas County Procedure, DETWDB Policies and Procedures 5.04)

7. Shall ensure an adequate payroll system (State of Texas County Procedure, TWC FMGC Chapter 9, DETWDB Policies and Procedures Chapter 5, 11.03,11.05,11.06)

8. Shall ensure annual and monthly report preparation policies and procedures (USDOL Regulations Section 629.35(b)(3), Governmental Accounting Standards Board Statements 14 and 20,TWC FMGC Chapter 12, DETWDB 5.06,8.00)

9. Shall ensure an adequate tracking and treatment system of Program Income (USDOL Regulations, TWC FMGC Chapter 8, DETWDB 6.01)

10. Establish a separate comprehensive financial and tracking system for the Board's accounting and related financial needs, to include checking accounts separate from the regular DETCOG accounts

11. Maintenance and generation of payroll information, payroll and reports for DETWDB staff

12. Preparation of timely reports for the internal management use in evaluation of program expenditure levels and resource utilization/availability

13. Preparation of necessary reports to quantify/qualify the flow of funds through the accounting system

14. Budget, resource and expenditure level in total, by grant

15. Design, modification and preparation of necessary reports for management of local Board review and oversight

16. Presentation of reports at regular and special meetings of the Board; as requested by the Board

17. Completion of closeout reports related to completed grant obligations

18. Preparation, completion and submission of all Federal and State tax reporting requirements as well as all reports as required (including but not limited to IRS form 940,941,990,1099, W-2, and TWC reporting)

19. Conducting of internal monitoring of DETCOG's DETWDB Workforce Center Staffing and Management contract operations

20. Participation and cooperation with all responsible oversight entities in the monitoring, review and audit of the accounting and administrative records

21. Participation and cooperation with the independent annual audit of the grant funds and the Board by the independent public auditors, including, but not limited to, generation of the general ledger accounts and furnishing supporting documentation in our possession as required for/by the auditors

22. Instances of fraud, waste and illegal acts or indications of such, including all questioned costs must be reported directly to the Board

Records and supporting documents in our possession are to be retained, and will be made available for examination by authorized representatives of the Board and the Texas Workforce Commission

C. SCOPE OF SERVICES

Independent Auditors are responsible for the following:

1. Base audit on the guidelines of the following publications:

- a. The Single Audit Act Amendments of 1996 (P.L. 104-156)
- b. OMB Circulars

c. American Institute of Certified Public Accountants (AICPA) Industry Audit Guide

d. Government Auditing Standards (Yellow Book)

e. OMB Compliance Supplements

f. Uniform Grant and Contract Management Standards (UGCMS), Texas Government Code, Chapter 783

g. State of Texas Single Audit Circular

2. An Audit Report Package consisting of the following;

a. Financial Statements

b. Non-Profit

1. Statement of Financial Position

2. Statement of Activities

3. Statement of Cash Flows

4. Notes to Financial Statements

c. Local and State Governments

1. Combined Balance Sheet-all fund types, account groups, and component units

2. Combined Statement of Revenues, Expenditures and Changes in Fund Balances-all governmental fund types and component units

3. Combined Statement of Revenues, Expenditures and Changes in Fund Balances-budget and actual-general and special revenue fund types

4. Combined Statement of Revenues, Expenses, and Changes in Retained Earnings-all Proprietary fund types

5. Notes to the Financial Statements

d. Independent Auditors Opinion Reports

1. Report on General Purpose or Basic Financial Statements

2. Report on Compliance

3. Report on Internal Controls

4. Report on Schedule of Expenditures of State and Federal Awards

4. Workpapers and work to be performed by client are to be identified in the proposal

5. Preliminary work is to be completed by June 15,1999.

6. Report review timing and number of copies:

a. Exposure draft is to be presented to DETWDB Executive Director and Fiscal Contracts Manager on or before July 15,1999

b. Final report is to be submitted to the Audit Committee on or before July 30, 1999 and additional copies for DETWDB shall be made available.

c. Audit report must contain all elements as required by TWC Financial Management Manual Chapter 11.

d. Instances of fraud, waste and illegal acts or indications of such, including all questioned costs must be covered.

e. Management Report is to be submitted as a separate report.

f. Workpapers are to be retained for a minimum of three years from the date of audit.

g. Workpapers will be made available for examination by authorized representatives of DETWDB and the Texas Workforce Commission.

PART 3 INSTRUCTIONS FOR PREPARATION AND SUBMITTAL OF PROPOSAL

3.1 Proposal Submittal Instructions Submission:

Response Deadline: All proposals must be actually received (not postmarked) by May 3, 1999, no later than 5:00p.m. in the DETWDB office, 1318 S. John Redditt, Suite C, Lufkin, Texas 75904. Any modifications to the proposal must be actually received by the response deadline. Proposals delivered/received after the 5:00 p.m. deadline on the due date will not be considered, but will be deemed late and unresponsive to this RFP and procurement process.

Format: Proposals must be typed and submitted on 8.5x 11 inch paper in accordance with the instructions of Part 3 of this RFP. Emphasis must be placed on addressing all the requirements of this RFP in a clear and concise manner.

Number of Copies: One (1) complete original, with original signatures and three (3) complete copies must be submitted. All must be legible.

Person(s) Authorized to Represent the Organization:

a. Proposals shall identify the liaison and primary contact person; and

b. Person with documented signatory authority to enter into and execute a contract should the proposal be selected for negotiation and result in a contract.

3.2 Preparation of Response and Format

Please complete and provide the following in accordance with the instructions provided herein, and submit them in the order outlined below. The Certification Regarding Debarment, Certification of Bidder, and Certification of Professional Qualifications must be executed to officially submit a response to this request.

a. Transmittal Letter Containing:

1.Proposer's understanding of this request, its requirements and services to be performed.

2.Statement from authorized signatory that proposal is valid for 30 days after submittal deadline.

3.A positive statement of commitment to perform the services within the period specified or pay a penalty in the form of a discount on cost of services performed.

4.Names and credentials of principle.

5.Describe any recent, local and regional office audit experience similar to the type requested; include JTPA, WTW, FSE&T experience, if applicable. Provide names and telephone numbers of client officials responsible for three of the last audits listed.

6.Identify audit managers, field supervisors, and other staff who will work on the audit, including staff from other than the local office. Provide as an attachment, resumes including relevant experience and continuing education for auditor in charge up to the individual with final responsibility.

7.If other auditors are to participate in the audit, similar information must be provided for those auditors.

b. Proposer's Profile:

1) Organization and size, local, regional, national, or international in operation.

2) Location of business headquarters; office where work is to be done and number of professional staff by staff level at that office.

3) Range of services performed by local office such as auditing, accounting, tax services, or management services.

c. Approach to Audit

1) Work Plan

a. Submit a work plan to accomplish the scope of the audit defined in Part 2 of this RFP. Include time estimate for each segment of the work plan by staff level to be assigned. Where possible, individual staff members should be named and their titles provided; the planned use of specialists should be specified.

b. The audit work plan should demonstrate the auditor's understanding of the audit requirements of a Single Audit as specified in OMB Circular A-128 and the audit tests and procedures to be applied in

completing the audit plan. The audit work plan should specify what work will be accomplished to allow the auditor to render:

- 1) An opinion report on the financial statements;
 - 2) A report on the study and evaluation and report on internal control systems; and
 - 3) A report on the organization's control system to assure compliance.
- 2) Reporting Requirements Describe proposer's understanding of, and ability to meet reporting requirements, including type and number of reports and exit conferences.
 - 3) Time Requirements Describe in detail plan to meet timeline and reporting deadline requirements.

c. Compensation Total cost of services proposed should be specified. All fees, expenses, and other requirements associated with providing audit services to DETWDB shall be stated. PART 4 ATTACHMENTS, INFORMATION, INSTRUCTIONS AND FORMS

4.1 Proposal Evaluation Criteria

Proposals will be evaluated by DETWDB using the following criteria and point system.

CRITERIA POINT VALUE

Technical Factors- Responsiveness of the proposal in clearly stating an understanding of the work to be performed, including comprehensiveness of audit work plan, reasonableness of time/hour estimates, staffing and timeliness of expected completion. 25

Demonstrated effectiveness based on the proposer's qualifications including:

Certification of professional qualifications; Experience in auditing similar entities, and similar type audits; Credentials of principles; Qualifications of staff; and Certification regarding debarment. 50

Reasonableness of Cost of the Proposed Service 20

Proposer is a small, minority, or female owned organization/business. 05

TOTAL 100

TRD-9902178

Harry Green

Executive Director

Deep East Texas Workforce Development Board, Inc.

Filed: April 14, 1999



East Texas Council of Governments

Notice of Request for Qualification for Independent Reviewers for Proposals for Child Care Management

This is a solicitation for individuals interested in serving as independent reviewers of proposals to be submitted to the East Texas Workforce Development Board for Child Care Management Services.

Local procurement policy requires that all proposals for delivery of services involving expenditures in excess of \$75,000 be reviewed by a panel of three or more independent reviewers. This review process requires that the panel of independent reviewers be on site at a location in the ETCOG region for a period of two to four days depending upon the number of proposals and/or the complexity of the procurement. The East Texas Council of Governments, administrative entity for the East Texas Workforce Development Area, will be responsible for engaging the services of the independent reviewers.

Compensation for this engagement shall be \$450 per day plus expenses. Selection of the reviewers shall be based upon professional experience with and knowledge of Texas Workforce funded Child Care Management Services programs and the ability to commit the time required to complete the review process. The current schedule for procurement contemplates that proposals for Child Care Management Services be reviewed between June 9th through June 11th, 1999.

Individuals wishing to serve as independent reviewers should submit a resume with a letter of application to:

Person to be Contracted Regarding Submission of Resume with Letter of Application

Wendell Holcombe, Director of Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road Kilgore, Texas 75662, Telephone: 903-984-8641 Fax: 903-983-1440

Closing Date for Receipt of Resumes with Letter of Application

In order to be considered for this engagement, a response should be received by May 17, 1999. Responses will remain on file for subsequent procurements for a two-year period.

TRD-9902150

Glynn Knight

Executive Director

East Texas Council of Governments

Filed: April 12, 1999



Request for Proposals

The East Texas Council of Governments (ETCOG) requests proposals for Group Medical, Dental and Prescription Drug coverages: (1) Traditional Indemnity or an Indemnity Preferred Provider Organization (PPO); (2) Dental Coverage (On a Conventional Indemnity, Fully-Insured Basis).

To request a copy of the Request for Proposal (RFP) with specifications, contact Mark W. Sweeney, Medical Insurance Committee Chairman, at 3800 Stone Road, Kilgore, Texas, 75662, Telephone number: 903-984-8641, Fax number: 903-983-1440. You may also obtain a copy of the RFP, in PDF format, via our web page: www.etcog.org.

The closing date is Tuesday, June 15, 1999, at 3:00 p.m. ETCOG reserves the right to reject any and all proposals submitted and to accept the proposal that is considered to be in the best interest of ETCOG. ETCOG may request additional information as necessary to clarify, explain, and verify any aspect of a proposal. ETCOG shall be the sole judge of the acceptability of any proposal.

TRD-9902160

Glynn Knight

Executive Director

East Texas Council of Governments

Filed: April 13, 1999



Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location

listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Licensing Actions for Radioactive Materials

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	0	03/23/99
Corpus Christi	Haas-Anderson Construction Inc	L05249	Corpus Christi	0	03/29/99
Mansfield	Clean Solvent Recycling Co Inc	L05243	Mansfield	0	03/19/99
Midland	Midland Walk In and Cardiology Clinic	L05239	Midland	0	03/26/99
Paris	Turner International Piping	L05237	Paris	0	03/17/99
Throughout Texas	Zachry Construction Corporation	L05230	San Antonio	0	03/17/99

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Alice	Columbia Alice Physicians And Surgeons Hospital	L02390	Alice	22	03/24/99
Alvin	Amoco Chemical Company	L01422	Alvin	51	03/24/99
Arlington	Health Images Texas	L05033	Arlington	10	03/24/99
Austin	Austin Heart PA	L04623	Austin	9	03/19/99
Baytown	Bayer Corporation	L01577	Baytown	48	03/26/99
Bedford	Carter Bloodcare	L00630	Bedfore	35	03/16/99
Childress	Childress Regional Medical Center	L02784	Childress	22	03/18/99
Corpus Christi	Spohn Health System Corporation	L00265	Corpus Christi	67	03/17/99
Corpus Christi	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	37	03/25/99
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	13	03/29/99
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	16	03/26/99
Corsicana	Navarro Hospital LP	L02458	Corsicana	24	03/30/99
Dallas	Presbyterian Healthcare System	L04288	Dallas	13	03/29/99
Dallas	Heartplace	L04607	Dallas	22	03/30/99
Dallas	Texas Cardiology Consultants	L04997	Dallas	9	03/15/99
Denton	Denton Hospital Inc	L04003	Denton	24	03/22/99
Duncanville	Millennium Diagnostic Imaging LLC	L03717	Duncanville	32	03/15/99
El Paso	Tenet Hospitals Limited	L04758	El Paso	10	03/26/99
El Paso	Sierra Medical Center Gamma Knife Suite	L04758	El Paso	9	03/23/99
Farmers Branch	Cardiovascular Consultants LLP	L04627	Farmers Branch	2	03/22/99
Fort Worth	Computalog Wireline Products Inc	L00747	Fort Worth	57	03/25/99
Gainsville	Gainsville Memorial Hospital	L02585	Gainsville	18	03/23/99
Houston	Kelsey Seybold Clinic PA	L00391	Houston	47	03/26/99
Houston	The Methodist Hospital Department of Radiation Safety	L00457	Houston	92	03/22/99
Houston	The Methodist Hospital Department Of Radiation Safety	L00457	Houston	93	03/24/99
Houston	Doctors Hospital 1997 LP	L02047	Houston	19	03/26/99
Houston	Westhollow Technology Center	L02116	Houston	38	03/22/99
Houston	Richmond Imaging Affiliates LTD	L04342	Houston	23	03/18/99
Houston	Champions MRI & Diagnostic Center	L04859	Houston	8	03/19/99
Houston	Conam Inspection	L05010	Houston	17	03/24/99
Kingwood	KPH Consolidation Inc	L04482	Kingwood	17	03/18/99
Mcallen	Rio Grande Regional Hospital	L03288	Mcallen	33	03/25/99
New Braunfels	Sunbelt Cement of Texs LP	L02809	New Braunfels	21	03/26/99

Odessa	Golder Cat Scan And MRI Center	L04770	Odessa	2	03/26/99
Orange	Inland Paperboard And Packaging Inc	L01029	Orange	45	03/26/99
Orange	Printpack Inc	L01081	Orange	25	03/25/99
Pasadena	Microtech Services Inc	L04656	Pasadena	5	03/31/99
San Antonio	Methodist Healthcare System of San Antonio	L00598	San Antonio	136	03/26/99
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	52	03/29/99
San Antonio	Santa Rosa Health Care	L02237	San Antonio	55	03/15/99
San Antonio	Careselect San Antonio Inc	L04860	San Antonio	13	03/19/99
Sherman	Columbia Medical Center	L02372	Sherman	20	03/18/99
Stafford	Soloco Texas L P	L04708	Stafford	9	03/29/99
Snyder	Weaver Services	L01489	Snyder	21	03/26/99
Texarkana	St Michael Health Care Center	L04805	Texarkana	7	03/23/99
Texas City	Industrial Fabricators Inc	L04935	Texas City	8	03/31/99
Throughout	Computalog wireline	L04286	Fort Worth	34	03/18/99
Throughout Texas	H B Zachry Company	L01995	San Antonio	19	03/17/99
Throughout Texas	Technical Welding	L02187	Pasadena	120	03/26/99
Throughout Texas	Metco	L03018	Houston	83	03/17/99
Throughout Texas	Metco	L03018	Houston	84	03/25/99
Throughout Texas	Global X-Ray & Testing Corp	L03663	Aransas Pass	66	03/25/99
Throughout Texas	Lone Star Testing Laboratories	L04013	Houston	9	03/22/99
Throughout Texas	Oceaneering International Inc	L04463	Houston	22	03/25/99
Throughout Texas	Terracon Consultants Inc	L04632	Dallas	6	03/18/99
Throughout Texas	Arts Inspection And Pipe Service	L04735	Odessa	3	03/31/99
Throughout Texas	Tierra Testing and Consulting Inc	L04822	San Antonio	5	03/18/99
Throughout Texas	Granite City Construction	L04923	Rowlett	3	03/17/99
Throughout Texas	Apex Geoscience Inc	L04929	Tyler	5	03/18/99
Throughout Texas	Gulf Coast Inspection Inc	L04934	Ingleside	6	03/17/99
Throughout Texas	Professional Service Industries Inc	L04941	Longview	1	03/22/99
Throughout Texas	M & G Inspection & Testing Incorporated	L05220	Houston	2	03/26/99
Throughout Texas	Pathfinder Energy Services Inc	L05236	Houston	1	03/23/99
Throughout Texas	Icon Worldwide Inc	L01884	Houston	28	03/31/99
Throughout Texas	Global X-Ray & Testing Corp	L03663	Aransas Pass	67	03/31/99
Tyler	Trinity Mother Frances Health System	L01670	Tyler	70	03/22/99
Tyler	Cardiovascular Associates of East Texas PA	L04800	Tyler	5	03/23/99

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Bryan	Texas Municipal Power Agency	L02913	Bryan	16	03/29/99
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	43	03/18/99
San Antonio	Osteoscreen Inc	L04308	San Antonio	7	03/26/99
Throughout Texas	Reece Albert Inc	L02296	San Angelo	12	03/19/99
Throughout Texas	Colorado Materials Company	L04175	San Marcos	4	03/24/99
Throughout Texas	Coastal Wireline Services Inc	L04239	Pearland	6	03/18/99
Throughout Texas	Westex Inspection Inc	L04775	Odessa	6	03/31/99

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Arlington	City Of Arlington Capital Improvements Department	L02899	Arlington	7	03/17/99
Colleyville	City Of Colleyville	L04926	Colleyville	1	03/31/99
Fort Worth	Martin Eby Construction Inc	L04400	Fort Worth	8	03/31/99
San Antonio	Clark Construction Company	L04855	San Antonio	1	03/18/99
Sweetwater	Southern Cotton Oil Company	L01994	Sweetwater	6	03/29/99

EXEMPTIONS ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Houston	Flange Tech	L04281	Houston	0	03/26/99

[graphic]

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation

Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9902096
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 9, 1999



Notice of Applicants' Conference Concerning the Request for Proposals for the Texas Health Steps/Medicaid Client Outreach and Informing Services

The Texas Department of Health (department), Texas Health Steps (THSteps) Program, will conduct an applicants' conference on April 30, 1999, at 9:30 a.m., in the Tower Building of the Texas Department of Health, Room T-607, 1100 West 49th Street, Austin, Texas. The conference concerns the THSteps request for proposals (RFP) entitled, "Outreach, Informing, and Support Services" for the THSteps clients in public health regions 1, 2/3, 6/5 south, 7, 8 (Bexar and contiguous counties), and 9.

All communication concerning this applicants' conference must be addressed to Craig Ward, Texas Health Steps, Texas Department of Health, Room M-426.4 of the Moreton Building, 1100 West 49th Street, Austin, Texas 78756; Telephone (512) 458-7111, Extension 2863; Fax (512) 458-7256.

Information concerning this RFP previously appeared in the Notice of Request for Proposals for Texas Health Steps/Medicaid Client Outreach and Informing Services published in the April 16, 1999, issue of the Texas Register, (TRD 9902053) and is again provided as follows:

The THSteps, Medicaid Outreach and Informing services expand client awareness of existing THSteps/Medicaid health services and stimulate the use of preventive services so that young people in this population can receive medical and dental care before health problems become chronic and irreversible damage occurs. Proposals will be reviewed and awarded on a competitive basis.

PURPOSE: The purpose of this program is to provide THSteps/Medicaid clients with informing, outreach and support services. Activities which are integral to the provision of client service delivery functions are: client outreach and informing, including targeted outreach to special population groups, automated documentation; client support services assisting in information and referral for scheduling appointments and follow up screening; and toll-free telephone service in certain areas. The selected applicant will also be required to coordinate outreach and client support services with managed care providers within the service delivery area(s).

ELIGIBLE APPLICANTS: Eligible applicants are community-based groups, health departments, public and private agencies, not-for-profit organizations, boards, and other health related organizations. Medicaid managed care organizations (MCOs) and subsidiaries of Medicaid MCOs are NOT eligible for contract award.

AVAILABLE FUNDS: Program funds are provided by both federal and state sources. The amount of state funds allocated to the department is determined by the Texas Legislature. The estimated amount of funds for this Request for Proposals (RFP) is \$7,400,000 and is expected to be available for the period beginning September 1, 1999 through August 31, 2000.

SUBMISSION REQUIREMENTS: Proposal(s) prepared according to the instructions in the RFP package, must be received by Lee Johnson, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 on or before 5:00 p.m., Central Daylight Saving Time, May 19, 1999. No facsimiles or electronic formats will be accepted.

REVIEW AND AWARD CRITERIA: Each application will be screened for minimum eligibility and completeness, as well as satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete, or which arrive after the deadline, will not be considered.

FOR A COPY OF THE RFP. The RFP will be available for release on April 23, 1999. To request a copy of the RFP, contact Lee Johnson, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3179; telephone (512) 458-7111, extension 2982; facsimile (512) 458-7256.

TRD-9902179
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 14, 1999



Notice of Request for Proposals for a Comprehensive Midwifery Examination

Purpose

The Texas Department of Health (department) invites proposals in response to the Request for Proposals (RFP) entitled "Comprehensive Midwifery Examination: Generation, Production, Scoring, " from entities experienced in generating and producing an extensive multiple choice examination in both English and Spanish for use in qualifying candidates as midwives.

Description

The written examination will test candidates in seven areas of knowledge related to the practice of midwifery. The examination will consist of a minimum of 300 questions to be administered by the department at least two times each year. Approximately 20 candidates are expected to take the examination annually. The applicant will generate, produce in sufficient quantities, and score the examination for a three-year period, beginning November 1, 1999.

Evaluation and Selection

Selection of the contractor will be based on the applicant's general approach and plans to meet the requirements of the RFP, including the provisions and cost for continuation of the project during the second and third years; past performance on projects of similar scope and size; and the overall cost (examination fee) charged to the candidates over the entire period of this agreement.

Obtaining the RFP

Entities interested in submitting a proposal shall contact Yvonne Feinleib, Midwifery Director, Professional Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, telephone (512) 834-4523 or fax (512) 834-6677 to obtain a copy of the RFP. Proposals will not be considered from bidders failing to complete the proper RFP package.

Deadline

Proposals may be delivered by mail to Yvonne Feinleib, Midwifery Director, Professional Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, or in person to 8407 Wall Street, Suite S-420, Austin, Texas 78754. Proposals must be submitted no later than 5:00 p.m., Central Daylight Saving Time, on July 5, 1999.

TRD-9902161
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 13, 1999



Notice of Request for Proposals for Community and Worksite Wellness Programs, Policies and Environmental Change for Physical Activity and Nutrition

Introduction

The Texas Department of Health (department), Chronic Disease Community and Worksite Wellness program, invites proposals from any public or private entity to address physical activity and nutrition. Approximately \$100,000 will be awarded on a competitive basis to support development of community and worksite wellness programs that include policy and environmental changes to promote physical activity and nutrition as a way to prevent heart disease and cancer. Approximately 40 contracts will be awarded as a result of this Request for Proposals (RFP).

Eligible Applicants

Eligible applicants are private and non-profit entities including local health departments, worksites, schools, and community agencies within the State of Texas. Individuals are not eligible.

Availability of Funds

Approximately \$100,000 is expected to be available to fund up to \$2,499 per entity for approximately 40 projects with a 12-month

budget. The specific dollar amount to be awarded to each applicant will depend upon the merit and scope of the proposed project. Award of these funds is contingent upon annual general state revenue and federal grant awards to the department and upon satisfactory completion of the grant application and the negotiation process.

To Obtain RFP

To obtain a copy of the RFP, contact Jennifer Smith, Bureau of Disease and Injury Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, Telephone (512) 458-7670, or send an E-mail request to jennifer.smith@tdh.state.tx.us. Applications are due no later than 5:00 p.m., Central Daylight Saving Time, June 4, 1999.

TRD-9902162
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 13, 1999



Notice of Request for Proposals for Integrated Health Care Delivery for Primary Health Care and Title V Fee-For-Service Programs

The Texas Department of Health (department), Deputyship for Prevention and Community Health, is accepting Requests For Proposals (RFPs) for a pilot program to integrate health care delivery services utilizing fee-for-service funding from the Primary Health Care (PHC) and Title V Maternal and Child Health Services Programs. This funding will enable communities to identify, design, and implement comprehensive, preventive and primary care services for medically indigent persons and to create a Community Advisory Committee to further study, prioritize and advise regarding needed services and service delivery. The service area consists of pshur, Van Zandt and Wood Counties. An applicant may apply to serve one, any two, or all of the counties in the service area. The applicant(s) selected will also work collaboratively with the department to facilitate integration of intake and eligibility determination; uniform contract requirements; reporting; performance standards; contract monitoring; reimbursement methodology; department policy development; and automated data services. Selected applicants will also participate as a demonstration site for initial implementation and evaluation of these integrated systems. Applicants may apply for funding not to exceed \$515,922 for the 15-month contract period.

Eligible applicants include any nonprofit agency, institution, or organization; as well as any governmental entity or any for-profit entity which establishes a nonprofit "unit" capable of meeting minimum requirements of this RFP.

Selected applicants will be notified of awards by May 28, 1999. Contracts which may be awarded will have a start date of June 1, 1999, and go through August 31, 2000. If none of the applicants satisfactorily meet the criteria, the department reserves the right to refrain from making a selection. The department reserves the right not to make an award because of changing funding priorities. After application review and evaluation an applicant or applicants will be selected to negotiate a contract or contracts. Funds are provided to contractors through monthly reimbursement of billings for services provided. The department reserves the right to adjust the funding allocation during the term of the contract pursuant to the terms of the contract.

Individuals or agencies interested in submitting a proposal may request a copy of the Request for Proposals from Carl W. Clark,

M.P.H., Contract Management Section, at (512) 458-7111, extension 6705; or an electronic copy may be obtained from the Internet site, TEXAS MARKETPLACE at <http://www.texas-one.org> (maintained by the Texas Department of Economic Development). The original and five copies of the proposal must be received by 5:00 p.m. Central Daylight Saving Time on May 24, 1999, at the Contract Management Section, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

Incomplete proposals and proposals received after the deadline of 5:00 p.m. Central Daylight Saving Time on May 24, 1999, will not be evaluated.

TRD-9902180
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 14, 1999



Notice of Request for Proposals for Title V Maternal and Child Health Services Block Grant

Purpose

The Texas Department of Health (department), Bureau of Children's Health is issuing this request for proposals (RFP) in two areas under the Title V Maternal and Child Health (MCH) Services Block Grant: MCH Genetic Clinical Services and Population-Based Essential (Core) Public Health Genetic Projects to improve the health status of women and children.

Description

The department is seeking contractors to provide MCH genetic services and to conduct priority topic core public health projects. The department will use a competitive application process to select contractors for projects.

Eligible Applicants

Any applicant capable of meeting the minimum requirements in the RFP is eligible to apply for a contract.

Limitations

Funding for selected applications will depend upon available federal funds and state appropriations. The department reserves the right to reject any and all offers received in response to the RFP and to cancel the RFP if it is deemed in the best interest of the department.

Term

Applicants may apply for funding for fiscal year 2000, beginning September 1, 1999 through August 31, 2000 only.

For a Copy of the RFP

Interested parties should call Terranette West at (512) 458-7111, extension 2193 to request the RFP kit.

Deadlines

All applications should be sent to the Texas Department of Health, Bureau of Children's Health, Room T-608, Attention: Dixie G. Camp, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 458-7111, extension 6221. Applications must be received on or before 5:00 p.m., Central Daylight Saving Time, May 13, 1999.

Evaluation and Selection

Applications will be reviewed by department central office staff and an independent consultant.

TRD-9902163

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: April 13, 1999



Notice of Request for Proposals to Provide Community-Based Outreach Activities to Increase Migrant Farm Worker Participation in the Texas Special Supplemental Nutrition Program for Women, Infants, and Children

Introduction

The Texas Department of Health (department), Women, Infants, and Children (WIC) Special Supplemental Nutrition Program, announces a Request for Proposals (RFP) for a 13- month period beginning August 1, 1999, through August 31, 2000. The RFP will be released on May 7, 1999.

Purpose

The purpose of the funding is to conduct or encourage community-based outreach and education on behalf of the Texas WIC program, and in partnership with local WIC agencies and other like organizations, to increase the number of eligible migrant farm worker families enrolled in WIC. A migrant farm worker is defined as an individual whose principal employment is in agriculture on a seasonal basis, who has been employed within the last 24 months, and who establishes, for the purpose of such employment, a temporary abode.

Eligible Applicants

Eligible applicants include nonprofit organizations that have experience working with the migrant farm worker population.

Availability of Funds

Approximately \$50,000 is expected to be available to fund one or more projects with a 13- month budget. The specific dollar amount to be awarded will depend upon the merit and scope of the proposed project. Continued funding in future years will be based upon the availability of funds and documented progress of the project during the prior budget period.

Project and Budget Periods

Contracts will be funded for 13 months beginning August 1, 1999, and ending August 31, 2000. There is no set cap on individual budgets.

General Purpose and Program Goals

To increase participation in the WIC program by migrant farm workers through community- based activities in coordination with local WIC programs.

Review and Award Criteria

Each application will first be screened for completeness and timeliness. Proposals which are deemed incomplete or arrive after the deadline will not be reviewed. Proposals will be reviewed by a team of reviewers. The proposals will be evaluated using the criteria and review process described in the RFP.

Deadline

Proposals prepared according to the instructions in the RFP package must be received by the department by 5:00 P.M., Central Daylight Saving Time, on or before June 7, 1999.

To obtain a copy of the Request For Proposals

Requests for a copy of the RFP should be directed to John Koloen, Bureau of Community Oriented Public Health, Health Communications Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756; by E-mail at john.koloen@tdh.state.tx.us; or by fax at (512) 406-0722.

TRD-9902113

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: April 9, 1999



Texas Department of Mental Health and Mental Retardation

Announcement of State Plan Amendment

The Texas Department of Mental Health and Mental Retardation (TDMHMR) announces its intention to submit Amendment Number 558, Transmittal Number 99-03 of the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

Amendment number 558 will revise the reimbursement methodology and the definition of a reimbursed contact for Targeted Case Management for Persons with Chronic Mental Illness and for Targeted Case Management for Persons with Mental Retardation or a Related Condition, respectively. The revision will base the reimbursement on a model rate plus an administrative service add-on with an annual year end settle-up. The unit of service will be revised from a face-to-face or telephone contact to a monthly unit of service based on a face-to-face contact. The net increase in aggregate expenditures in service coordination for FFY 1999 is \$1,767,688.

The community mental health and mental retardation centers that contract with TDMHMR may be contacted for copies of the proposed amendment.

Copies of the amendments will be available from the TDMHMR Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

TRD-9902183

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: April 14, 1999



Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding ASARCO INCORPORATED, Docket Number 1997-0719-IHW-E; SWR Number 30003; Enforcement ID Number 1017 on March 31, 1999 assessing \$40,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Natural Resource

Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BELL PROCESSING, INC., Docket Numbers 1997-1142-MSW-E, 1997-0794-MSW-E, and 1997-0795; Enforcement ID Numbers. 2719, 2614 and 11879 on March 31, 1999 assessing \$88,321.80 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224, Tracy Harrison, Staff Attorney at (512) 239-1736 or Carol Piza, Enforcement Coordinator at (512) 239-6729, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AZTEX DAIRY, INC., Docket Number 1998-0398-AGR-E; Permit Number 02953; Enforcement ID Number 9507 on March 31, 1999 assessing \$8,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Claudia Chaffin, Enforcement Coordinator at (512) 239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBERT UPCHURCH, Docket Number 1998-0732-OSI-E; OSSF Registration Number 3201; Enforcement ID Number 12625 on March 31, 1999 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495 or Robert Brach, Enforcement Coordinator at (512) 239-2150, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RICHARD WIMBERLEY, Docket Number 1998-0534-OSI-E; Enforcement ID Number 12213 on March 31, 1999 assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512) 239-0678 or Merrilee Gerberding, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ULTRAMAR DIAMOND SHAMROCK CORP., Docket Number 1998-0246-EAQ-E; Edwards Aquifer Protection Program File Number 94031101; Enforcement ID Number 12309 on March 31, 1999 assessing \$3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TETCO STORES, INC., Docket Number 1998-0552-EAQ-E; Edwards Aquifer Number 806; Enforcement ID Number 12494 on March 31, 1999 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RED RIVER AUTHORITY OF TEXAS, Docket Number 1998-0455-MWD-E; WQ 0011445-001;

Enforcement ID Number 12504 on March 31, 1999 assessing \$42,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cliff Moore, Enforcement Coordinator at (915) 698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BC UTILITIES, INC., Docket Number 1998-0975-MWD-E; WQ Permit Number 11145-001; Enforcement ID Number 11641 on March 31, 1999 assessing \$1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEEN MANIA MINISTRIES, INC., Docket Number 1998-0215-MWD-E; WQ Permit Number 13790-001; Enforcement ID Number 8394 on March 31, 1999 assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding KEVIN & JUDY LUNA DBA CARRIZO CREEK MOBILE HOME PARK, Docket Number 1997-1013-MWD-E; Enforcement ID Number 11925 on March 31, 1999 assessing \$13,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512) 239-2029 or Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HENRY ED KERL, Docket Number 1998-0152-MSW-E; MSW Site Number 455090056; Enforcement ID Number 12124 on March 31, 1999 assessing \$1000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sabelyn Pussman, Enforcement Coordinator at (512) 239-6061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARK MCFADDEN, LONE STAR MEDI-WASTE, INC. & POSITIVE IMPACT WASTE SOLUTIONS, INC., Docket Number 1998-1123-MSW-E; MSW Unauthorized Facility Number 455020018; Enforcement ID Number 12827 on March 31, 1999 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting John Mead, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LONE STAR MEDI-WASTE, INC., Docket Number 1998-1122-MSW-E; MSW Numbers 54006 & 50056; Enforcement ID Numbers 12828 on March 31, 1999 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Vic Ramirez, Staff Attorney at (512) 239-0478 or John Mead, Enforcement Coordinator at (512) 239-6010, Texas Natural

Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BEAR MOTOR SALES, INC., Docket Number 1998-0129-MLM-E; TNRCC ID Number DI-0027-T; Enforcement ID Number 12108 on March 31, 1999 assessing \$3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney at (512) 239-0777 or Jayme Brown, Enforcement Coordinator at (512) 239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L.C. SKINNER DBA L.C. SKINNER VACUUM TRUCK SERVICE, Docket Number 1998-0634-SLG-E; Transporter Number 21483; Enforcement ID Number 12552 on March 31, 1999 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAUL VALLES, Docket Number 1998-0479-MLM-E; Account Number EE-2031-S; Enforcement ID Number 12243 on March 31, 1999 assessing \$20,000 in administrative penalties with \$20,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Adele Noel, Enforcement Coordinator at (512) 239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An amended agreed order was entered regarding ELF ATOCHEM NORTH AMERICA, INC., Docket Number 1998-1169-IHW-E; WQP 01393; SWR Number 31695 on March 31, 1999.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.I. DU PONT DE NEMOURS & CO., INC., Docket Number 1998-0992-IHW-E; Enforcement ID Number 1028 on March 31, 1999 assessing \$5,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAN ANGELO FEEDYARD, Docket Number 1997-0738-AGR-E; TNRCC ID Number 01522; Enforcement ID Number 9543 on March 31, 1999 assessing \$3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Claudia Chaffin, Enforcement Coordinator at (512) 239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BIG 'R' RENTS CORPORATION, Docket Number 1998-0158-AIR-E; Account Number EE-1314-K; Enforcement ID Number 12160 on March 31, 1999 assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISRAEL LEAL DBA LOCKWOOD COLLISION REPAIR, Docket Number 1998-0122-AIR-E; Account Number HX-1421-L; Enforcement ID Number 12138 on March 31, 1999 assessing \$1,800 in administrative penalties with \$360 deferred.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Sheila Smith, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ACME BRICK COMPANY, Docket Number 1998-0934-IWD-E; WQ Permit Number 00444; Enforcement ID Number 12774 on March 31, 1999 assessing \$2500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DIAMOND MINI-MART, INC., A WHOLLY OWNED SUBSIDIARY OF EVANS SYSTEMS, INC., Docket Number 1998-0553-PST-E; TNRCC ID Number 0022313; Enforcement ID Number 12582 on March 31, 1999 assessing \$5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Pupilampu, Staff Attorney at (512) 239-0677, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANDREWS TRANSPORT INC. TRUCKING COMPANY, Docket Number 1998-0648-PST-E; Enforcement ID Number 12611 on March 31, 1999 assessing \$1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PESHAWAR, INC. DBA GOOBER'S, Docket Number 1998-0603-PST-E; PST Facility ID Number 0008296; Enforcement ID Number 12585 on March 31, 1999 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BISMO INC. DBA HIGHWAY 80 TEXACO, Docket Number 1998-1004-PST-E; PST Facility ID Number 13518; Enforcement ID Number 12713 on March 31, 1999 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Frank Muser, Enforcement Coordinator at (512) 239-6951, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PHILLIPS 66 COMPANY, Docket Number 1998-0903-PST-E; PST Facility ID Number

0036471; Enforcement ID Number 12704 on March 31, 1999 assessing \$15,100 in administrative penalties with \$3,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Randy Norwood, Enforcement Coordinator at (512) 239-1879, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARK KILGORE, Docket Number 1998-0294-PST-E; No TNRCC Registration; Enforcement ID Number 12307 on March 31, 1999 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding DAVID LOTT DBA PLAYCATION MARINA, Docket Number 1996-1558-PWS-E; SOAH Docket Number 582-98-1683 on March 30, 1999 assessing \$4,070 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512) 239-0678 or Terry Thompson, Enforcement Coordinator at (512) 239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding DERREL HUNGERFORD, Docket Number 1997-0583-AGR-E; SOAH Docket Number 582-98-1223 on March 30, 1999 assessing \$23,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney at (512) 239-3506 or Claudia Chaffin, Enforcement Coordinator at (512) 239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9902158

LaDonna Castanuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: April 13, 1999



Invitation to Comment

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of the Draft Revisions to Series 1 (Public Participation), Series 6 (Water Quality Management Planning), and Series 11 (Segment Classification) of the Water Quality Management Program Continuing Planning Process Document.

The Continuing Planning Process is a document which describes the State of Texas water quality management program. This document provides the current management and technical procedures developed and implemented by the TNRCC to control, manage, and abate water pollution in the state. The Continuing Planning Process document's purpose is to demonstrate that the program requirements and methods employed by the TNRCC will protect and maintain water quality for the benefit of the entire state.

The Clean Water Act requires the state to establish and maintain a Continuing Planning Process document which contains the procedures by which the TNRCC will operate. These procedures are developed by the various divisions responsible for implementing the TNRCC's water quality management programs. In order to maintain current procedures, the TNRCC is updating the sections of the document

for Series 1 (Public Participation) and Series 6 (Water Quality Management Planning) in order to outline an efficient process for updating the State of Texas Water Quality Management Plan process that does not delay issuance of Texas Pollutant Discharge Elimination System permits. The TNRCC must ensure that effluent limitations in waste discharge permits are consistent with the state's Water Quality Management Plan. The TNRCC is also updating Series 11 (Segment Classification) in order to clarify how the classification, water quality limited, applies to water quality management planning.

A copy of the draft revisions for Series 1 (Public Participation), Series 6 (Water Quality Management Planning), and Series 11 (Segment Classification) of the Water Quality Management Program Continuing Planning Process Document may be viewed on the TNRCC's web page at <http://www.tnrcc.state.tx.us/water/quality/index.html>, and at the TNRCC Central Office at 12015 North Interstate 35, Building A, Library.

Comments on the draft revisions for Series 1 (Public Participation), Series 6 (Water Quality Management Planning), and Series 11 (Segment Classification) of the Water Quality Management Program Continuing Planning Process Document shall be provided in written form and sent to Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4619. Comments may be faxed to (512) 239-4410, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be **received by 5:00 p.m., May 23, 1999**. For further information contact Suzanne Vargas, TNRCC, Water Quality Division, MC 150, (512) 239-4619, e-mail svargas@tnrcc.state.tx.us.

TRD-9902174

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: April 14, 1999



Notice of Extension of the Comment Period for Chapters 37, 327, 331-335, 350

The Texas Natural Resource Conservation Commission (commission or TNRCC) proposed new 30 Texas Administrative Code Chapter 350 and conforming rule changes in Chapters 37, 327, and 331-335. The rules were published in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2165-2286). The Figures can also be found in the March 26, 1999, issue of the *Texas Register* (24 TexReg 2369-2518).

The Texas Risk Reduction Program rule, would establish one set of corrective action requirements for programs under the jurisdiction of the TNRCC. The preamble to the proposed rule established April 26, 1999, as the final day of the public comment period. The commission is **extending the public comment period to 5:00 p.m., May 11, 1999**. Written comments may be mailed to Bettie Bell, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808, (512) 239-5687, or (512) 239-6385. Please reference Rules Tracking Log Number 96106-350-WS.

For further information, please contact Chet Clarke, Greg Tipple, or Paul Lewis of the Remediation Division, (512) 239-0310; Scott Crouch, Voluntary Cleanup Program, (512) 239-2486; or Clark Talkington, Waste Policy and Regulations Division, (512) 239-6731.

If you have specific questions on rule language regarding ecological risk assessments, please contact Larry Champagne, Remediation Division, (512) 239-0310.

TRD-9902182

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: April 14, 1999



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC 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 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 **May 23, 1999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC 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 of the proposed AOs is available for public inspection at both the TNRCC'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 these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 23, 1999**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC 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 TNRCC **in writing**.

(1) COMPANY: Chapman Grain, Incorporated; DOCKET NUMBER: 1998-1190-AIR-E; IDENTIFIER: Account Number MJ-0003-C; LOCATION: Hondo, Medina County, Texas; TYPE OF FACILITY: grain handling; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(a) and (b), by failing to maintain and operate the facility in such a manner as to prevent a nuisance dust condition; PENALTY: \$3,125; ENFORCEMENT COORDINATOR: David D. Turner, (210) 403-4032; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(2) COMPANY: Christian Tabernacle dba In The Beginning Day Care; DOCKET NUMBER: 1998-1165-PWS-E; IDENTIFIER: Public Water Supply Number 1012697; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(a), by failing to meet the acceptable secondary chemical standard for manganese; 30 TAC §290.46(p)(2), by failing to inspect annually the interior and exterior of the 5,000-gallon pressure tank; and 30 TAC §290.41(c)(1)(F), (3)(K), and (O),

by failing to acquire a sanitary easement on all property within 150 feet of the well, provide the well with a screened casing vent, and lock the fence to the well unit; PENALTY: \$813; ENFORCEMENT COORDINATOR: Julie Talkington, (512) 239-0439; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: SMS Financial, L.L.C. and SMS Texas Financial, L.L.C. dba Country Village Mobile Home Estates; DOCKET NUMBER: 1998-1452-PWS-E; IDENTIFIER: Public Water Supply Number 1650111; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a), (e)(2), and the Code, §341.033(d), by failing to take routine bacteriological samples and by failing to provide public notification of the failure to sample; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Julie Talkington, (512) 239-0439; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(4) COMPANY: FelCor Airport Utilities, L.L.C.; DOCKET NUMBER: 1998-1442-MWD-E; IDENTIFIER: Permit Number 11159-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121, by failing to renew permit application on or before the expiration date and by allowing an unauthorized discharge of wastewater; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Joy Club of Austin, Inc.; DOCKET NUMBER: 98-0661-PWS-E; IDENTIFIER: Public Water Supply Number 2270121; LOCATION: near Round Rock, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and the THSC, §341.033(d), by failing to submit monthly water samples for bacteriological samples; and 30 TAC §290.103(5), by failing to notify the public of its failure to comply with the bacteriological monitoring requirements; PENALTY: \$1,238; ENFORCEMENT COORDINATOR: Paul Beasley, (512) 239-1759; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: The City of Kosse; DOCKET NUMBER: 1998-1081-MWD-E; IDENTIFIER: Permit Number 11405-001; LOCATION: Kosse, Limestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11405-001 and the Code, §26.121, by exceeding its permitted discharge limits; and 30 TAC §319.7(d), by failing to submit monthly effluent report forms; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Larry Husband dba Larry's Auto Sales; DOCKET NUMBER: 1998-1348-AIR-E; IDENTIFIER: Account Number GB-0227-M; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: used automobile sales; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Act, §382.085(b), by offering for sale a vehicle with a missing emission control device; PENALTY: \$625; ENFORCEMENT COORDINATOR: Carol Dye, (512) 239-1504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: City of Lubbock dba Lubbock Power & Light; DOCKET NUMBER: 1998- 1359-IWD-E; IDENTIFIER: Enforcement Identification Number 2604-3; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: power plant; RULE VIOLATED: 30 TAC §321.133(c)(2)(A), by exceeding the maximum

effluent limitation of 15 milligrams per liter (mpl) for total petroleum hydrocarbon; PENALTY: \$600; ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(9) COMPANY: Ed Trainum dba Main Auto Sales; DOCKET NUMBER: 1998-1342-AIR-E; IDENTIFIER: Account Number KF-0080-L; LOCATION: Kerrville, Kerr County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Act, §382.085(b), by offering for sale to the public a vehicle with a missing emission control device; PENALTY: \$400; ENFORCEMENT COORDINATOR: David D. Turner, (210) 403-4032; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(10) COMPANY: Military Highway Water Supply Corporation; DOCKET NUMBER: 1998- 1020-MWD-E; IDENTIFIER: Permit Number 13462-001; LOCATION: Progreso, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 13462-001 and the Code, §26.121, by failing to meet the permitted effluent limits; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(11) COMPANY: Montgomery County Municipal Utility District No. 24; DOCKET NUMBER: 1998-1398-MWD-E; IDENTIFIER: Permit Number 11789-001; LOCATION: near New Caney, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2), Permit Number 11789-001, and the Code, §26.121, by failing to renew permit application on or before the expiration date and by allowing an unauthorized discharge of wastewater; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Olivia Schacherl dba Olivia's Quik Stop; DOCKET NUMBER: 1998-1269- PWS-E; IDENTIFIER: Public Water Supply Number 0240010; LOCATION: near Encino, Brooks County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106, subsection (a)(1), and the Code, §341.033(d), by failing to provide a coliform sample siting plan and perform bacteriological monitoring; 30 TAC §290.42(e)(2) and (4), §290.46(f)(1) and (2), (g), and (h), by failing to provide disinfection equipment and by failing to provide a diethy-p-phenylenediamine chlorine test kit and facilities that are necessary to maintain an acceptable disinfection residual of 0.2 mpl in the distribution; 30 TAC §290.41(c)(3)(O) and §290.42(e)(8), by failing to provide a fenced or housed well unit with hypochlorination equipment; 30 TAC §290.41(c)(1)(F) and (3)(N), by failing to provide a sanitary easement and a flow meter on the well; and 30 TAC §290.45(c)(1)(A)(ii) and §290.46(p)(2), by failing to provide a minimum pressure tank capacity requirement of 220 gallons and by failing to conduct yearly inspections of the tank; PENALTY: \$0; ENFORCEMENT COORDINATOR: Jacinto R. Hinojosa, (956) 430-6029; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: Ali Saatsaz dba Reliable Used Cars; DOCKET NUMBER: 98-1148-AIR-E; IDENTIFIER: Account Number DB-4968-J; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: used car sales; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Act, §382.085(b), by offering for sale two vehicles with missing or inoperable vehicle emission control devices; PENALTY: \$600; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(14) COMPANY: Tempe Water Supply Corporation; DOCKET NUMBER: 1998-0980-PWS-E; IDENTIFIER: Public Water Supply Number 1870105; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a)(1), by failing to develop a sample siting plan and retain the plan for commission review; 30 TAC §290.46(j), (m), (n), (p)(1) and (2), and (w), by failing to provide a proper customer service inspection form, initiate a maintenance program for cleanliness of the facility, maintain the exterior coating of the 0.003 and 0.005 million gallon (MG) pressure tanks, maintain a map of the distribution system, perform annual tank inspections, and post a legible sign at the stand pipe with the name of the water supply and emergency telephone number; 30 TAC §290.43(c)(3) and (8), (d)(3), and (e), by failing to provide proper flap valves on the 0.066 and 0.030 MG ground storage tanks, maintain the exterior coating of the 0.020 MG stand pipe, provide the 0.003 MG pressure tank with a device to readily determine air-water-volume at the design water level and working pressure, provide the air injection line with a filter device to preclude compressor lubricants from reaching the water system, and provide a proper intruder resistant fence around the water plants; the Code, §341.036(g), by failing to maintain all water storage components in a water tight condition; 30 TAC §290.42(e)(5) and (7), and (j), by failing to provide a full-face, self-contained breathing apparatus, provide an upper screen vent for the chlorination room, and develop a thorough facility operations manual; 30 TAC §290.44(d) and §290.46(u), by failing to provide a minimum operating pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.45(b) and paragraph (1)(C), by failing to provide emergency power for the distribution system and by failing to comply with the minimum water system capacity requirements; 30 TAC §291.93(a)(3), by failing to submit a planning report; and 30 TAC §290.41(c)(1)(F), (3)(J), (K), (Q), and (L), by failing to obtain and record at the county courthouse a sanitary easement for the well site, repair the cracked sealing block, seal well heads, provide screened well casing vents, screen the air releases, and provide properly constructed well blowoff pipes; PENALTY: \$4,688; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Mr. Charles Turner; DOCKET NUMBER: 98-0733-IRR-E; IDENTIFIER: Enforcement Identification Number 10122; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: landscape and fence; RULE VIOLATED: The Code, §34.007, by operating as a licensed irrigator without a valid certificate of registration; PENALTY: \$250; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(16) COMPANY: Valero Refining Company; DOCKET NUMBER: 1998-1162-AIR-E; IDENTIFIER: Account Number NE-0112-G; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(1), 40 Code of Federal Regulations (CFR) §60.18, and the Act, §382.085(b), by failing to conduct performance testing on the Main, methyl tertiary butyl ether, and American Petroleum Institute Oil/Water Separator (API) flares to determine compliance for visible emissions, the presence of a flare pilot flame, net heating value of flare gas, and flare exit velocity within 60 days after achieving maximum production rate, but not later than 180 days after initial startup; 30 TAC §111.111(a)(4)(A)(ii) and (2)(C), §101.20(1), 40 CFR §60.105(a)(1), and the Act, §382.085(b), by failing to conduct and keep records of daily visual observations of the API flare and by failing to equip the Fluid Catalytic Cracking Unit catalyst regenerator with a cali-

brated and properly operating continuous emission monitoring system (CEMS) for opacity; 30 TAC §101.20(1), 40 CFR §60.49b(a) and (e), 60.46b(e), 60.48b(b), and the Act, §382.085(b), by failing to submit notifications of construction and actual start-up dates for Boiler 30-B-02 and by failing to conduct performance testing and install, calibrate, maintain, and operate a CEMS for measuring nitrogen oxides emissions for Boilers 30-B-02 and 03; 30 TAC §101.20(1), 40 CFR §60.105(a)(2), (4), (5), and (9), and the Act, §382.085(b), by failing to properly conduct span calibration drift test on CEMS for carbon monoxide and sulfur dioxide on the Belco Scrubber, hydrogen sulfide on plant fuel gas, and sulfur dioxide on the Sulfur Recovery Unit (SRU) Tail Gas Incinerator stack; 30 TAC §116.115(a), §101.20(1), 40 CFR §60.105(b), §60.106, Permit Number 8373, and the Act, §382.085(b), by failing to conduct performance testing on the Sulften Tail Gas Incinerator, within 180 days of start-up, to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere and by failing to conduct performance evaluation for the CEMS installed on the Sulften/SRU within 30 days of start-up; 30 TAC §101.20(1), 40 CFR §60.505(b), and the Act, §382.085(b), by failing to ensure that tank trucks loading at the facility met the vapor tightness requirements; 30 TAC §101.20(1), 40 CFR §60.503(a), and the Act, §382.085(b), by failing to provide the TNRCC 30 days prior notice of the initial performance testing on the truck loading rack vapor combustor and by failing to submit a written report of the results within 60 days of achieving the maximum production rate, but no later than 180 days after initial start-up of the facility; and 30 TAC §101.20(1), 40 CFR §60.698(c), and the Act, §382.085(b), by failing to report dry water seals on process wastewater drains and corrective actions taken; PENALTY: \$111,000; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(17) COMPANY: Valley By Products Incorporated; DOCKET NUMBER: 98-1212-MLM-E; IDENTIFIER: Account Number EE-1074-H and Water Quality Permit Number 01243-000; LOCATION: Canutillo, El Paso County, Texas; TYPE OF FACILITY: rendering plant; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(a) and (b), by failing to prevent a discharge of a contaminant that adversely affects human health or welfare and interferes with the normal use and enjoyment of property; and 30 TAC §305.125(11) and (17) and Water Quality Permit Number 01243-000, Section V, by failing to monitor the flow of wastewater to the pond series to ensure a daily average discharge of 1000 gallons per day with a maximum discharge of 2100 gallons per day and by failing to maintain records for all sludge removed from the wastewater treatment process; PENALTY: \$8,125; ENFORCEMENT COORDINATOR: Victor Ayala, (915) 783-6640; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(18) COMPANY: Wharton County Water Control and Improvement District No. 1; DOCKET NUMBER: 1998-1247-MWD-E; IDENTIFIER: Permit Number 10849-001; LOCATION: Louise, Wharton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10849-001 and the Code, §26.121, by failing to comply with the daily average ammonia nitrogen effluent limits and dissolved oxygen minimums; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Village Farms of Delaware, L.L.C., Cogentrix of Marfa, Inc., dba Village Farms of Texas; DOCKET NUMBER: 1998-1372-PWS-E; IDENTIFIER: Public Water Supply Number 1220011; LOCATION: Fort Davis, Jeff Davis County, Texas; TYPE

OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e), (f)(2)(B), and (t), by failing to employ a certified water works operator, repair a leaking water valve located near the service pumps, and conduct the required monitoring and testing for chlorine residual; 30 TAC §290.106(a)(1) and the Code, §341.033(d), by failing to collect the required bacteriological samples; 30 TAC §290.41(c)(1)(F) and (3)(M), by failing to obtain a sanitary easement for the public water supply well and by failing to provide a suitable sampling tap on the well discharge to facilitate the collection of samples for chemical and bacteriological analysis directly from the well; and 30 TAC §290.43(c), by failing to provide the ground storage tank with a properly designed overflow pipe; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Terry Thompson, (512) 239-6095; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

TRD-9902153

Paul Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: April 13, 1999



Notice of Proposed Selection of Remedy

The executive director of the Texas Natural Resource Conservation Commission (TNRCC or commission) is issuing this public notice of a proposed selection of remedy for the Baldwin Waste Oil state Superfund site. In accordance with the Texas Health and Safety Code, Chapter 361.187 of the Solid Waste Disposal Act, concerning the proposed remedial action, a public meeting regarding the TNRCC's selection of a proposed remedy for the Baldwin Waste Oil state Superfund site shall be held. The statute requires that the Commission shall publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice will also be published in the April 22, 1999, issue of the *Record Star*.

The public meeting is scheduled at the Nueces County Auditorium, 710 East Main in Robstown, Texas, Tuesday, May 25, 1999, beginning at 6:30 p.m. The public meeting will be legislative in nature and is not a contested case hearing under the Texas Government Code 2001.

Contemporaneously with this notice, the executive director of the TNRCC hereby makes available to all interested parties the public records he has regarding the facility. A portion of the records for this site, including documents pertinent to the proposed remedy, is available for review during regular business hours at the Nueces County Public Library, 710 East Main St., Robstown, Texas, telephone (512) 767-5228. Copies of the complete public record file may be obtained during business hours at the TNRCC, Central Records Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone (512) 239-2920. Photocopying of file information is subject to payment of a fee. A brief summary of those public records follows.

The site for which a remedy is being proposed, the Baldwin Waste Oil state Superfund site, was proposed for listing on the state registry of Superfund sites in the October 16, 1987, issue of the *Texas Register* (15 TexReg 3858). The Baldwin Waste Oil state Superfund site is located on the south side of County Road 44, approximately one mile north of State Highway 44 and about 1,000 feet west of Farm Road 1889, in Robstown. The property was leased for use as a waste oil processing facility to the Baldwin Waste Oil Company and became

operational in early 1978. Mr. Baldwin operated the plant until 1984, when he leased the facility to another company, which operated until their lease expired in 1986.

The facility as inspected by the Texas Water Commission, predecessor agency of the TNRCC, in November 1986, and found to be abandoned. A number of limited site investigations were performed at the facility, including a TNRCC inspection in October 1988. These site investigations primarily concentrated on sampling liquid materials present within site tanks, drums, containers, and sampling surface soils. Analyses of soil samples indicated elevated lead, chromium, barium, and arsenic concentrations.

At the request of the U. S. Environmental Protection Agency (EPA) On-Site Coordinator, the EPA Technical Assistance Team conducted additional site assessments in August 1990, and in March 1991. These site assessments were conducted to determine imminent threats to public health and the environment and to characterize the extent of contamination. The Technical Assistance Team site assessments primarily evaluated soil contamination and the possible migration of absorbed-phase contamination. Offsite and background soil samples did not contain total lead in detectable concentrations. Some on-site soil samples did indicate elevated total lead concentrations. Almost half of the on-site soil samples also had detectable concentrations of volatile organic compounds.

In July 1992, the EPA under their enforcement action, began emergency on-site removal and remediation activities. The wastes from the tanks and sludge were removed to an offsite incineration facility and the tanks were cut up and removed offsite for scrap metal. A bio-remediation cell was constructed in the former tank farm area and was operated and maintained by Suntide Environmental. This cell has since been removed and is no longer located on the property.

The TNRCC conducted an environmental investigation at the site from June 1995 through June 1996. Another round of sampling was conducted in February 1998, to obtain additional subsurface soil data and groundwater data to evaluate the horizontal extent of chemicals of concern. This investigation included 12 direct push soil borings, the installation of a down-gradient monitor well, and the collection and analysis soil and groundwater samples. Another sampling round was conducted by the TNRCC in February 1999, to determine background concentrations and to further delineate the metal concentrations in the surface soils on and off site. The concentrations of metals in the soils were determined to be below the soil remediation goals. Using the data collected during the remedial investigation, a Baseline Risk Assessment was conducted and finalized in April 1999.

The TNRCC prepared the Proposed Remedial Action Document in April 1999. This document presents the proposed remedy and justification for how this remedy demonstrates compliance with the relevant cleanup standards. Because the soils contaminated with volatile organics, semi-volatile organics and metals were below the remediation goals, the threat to public health, safety and the environment at the Baldwin Waste Oil site was eliminated; therefore, the TNRCC's proposed Remedial Action for the soils is no further action. The TNRCC through EPA's removal action proposes that natural attenuation, confirmed by additional groundwater monitoring, and deed recordation constitute the Remedial Action for the groundwater at the site. The TNRCC considers these actions to be adequate to protect human health and the environment.

The TNRCC is proposing that the existing monitor wells be sampled at a frequency of twice yearly for a period of three years. After this period the TNRCC proposes that the existing monitor wells be sampled at a frequency of once per year until sample results show

that natural attenuation has occurred as evidence by groundwater concentrations below the remediation goals.

Persons desiring to make comments on the proposed remedial action or the identification of potentially responsible parties may do so at the meeting or in writing prior to the public meeting. Written comments may be submitted to Ms. Diane Poteet, Project Manager, TNRCC, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087. All comments must be received by the close of the public meeting on May 25, 1999.

TRD-9902181

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: April 14, 1999



Notice of Public Hearing (Chapter 115)

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations (CFR), §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 115, Subchapter F, and to the SIP.

The commission proposes amendments to §§115.510, 115.512, 115.513, 115.515, and 115.516, concerning Miscellaneous Industrial Sources, Division 1: Cutback Asphalt. The commission proposes to add a definition for alternative asphalt. In addition, the commission proposes the amendments to substitute the term "alternative asphalt" for the phrase "emulsified asphalt" to give flexibility to industry as to the type of asphalt it may use during the peak ozone generating period, update the rules to match current scientific knowledge, and continue to ensure volatile organic compound reductions in Nueces County and in nonattainment areas. The volume limit on cutback use in Nueces County is changed from 8.0% to 7.0% to be consistent with the volume limitations that exist in other regulated areas.

A public hearing on the proposal will be held May 19, 1999 at 10:00 a.m. in Building F, Room 5108 of the TNRCC complex, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 98082-115-AI. Comments must be received by 5:00 p.m., May 24, 1999. For further information, please contact Terry Leifeste, Office of Environmental Policy, Analysis, and Assessment, (512) 239-1873.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9902142

Margaret Hoffman



Notice of Water Quality Applications

The following notices were issued during the period of March 29, 1999 through April 12, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 30 DAYS OF THE ISSUE DATE OF THE NOTICE.**

MEADOWLAND UTILITY CORPORATION, 109 Live Oak Lane, Friendswood, Texas, 77546, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 13632-001, which authorizes the discharge of treated domestic wastewater with a daily average flow not to exceed 23,400 gallons per day. The plant site is located approximately 7,600 feet west of the intersection of State Highway 35 and the American Canal, approximately 1.9 miles north of the intersection of State Highway 6 and McCormick Street in Brazoria County, Texas. The treated effluent is discharged to a Brazoria County Drainage Ditch #D-4; thence to Dickinson Bayou Above Tidal in Segment Number 1104 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving waters uses are no significant aquatic life uses for Brazoria County Drainage Ditch #D-4. The designated uses for Segment Number 1104 are intermediate aquatic life uses and contact recreation.

CITY OF ROYSE CITY, 124 Arch Street, Royse City, Texas 75189, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10366-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10366-001 will replace the existing NPDES Permit Number TX0021687 issued on July 29, 1994 and TNRCC Permit Number 10366-001. The plant site is located approximately one (1) mile south of the intersection of Interstate Highway 30 and Farm-to-Market Road 35 in Rockwall County, Texas. The treated effluent is discharged to Sabine Creek; thence to the South Fork Sabine River; thence to Lake Tawakoni in Segment Number 0507 of the Sabine River Basin. The unclassified receiving water uses are intermediate aquatic life uses for Sabine Creek. The designated uses for Segment Number 0507 are high aquatic life uses, public water supply, and contact recreation.

FOREST GLEN, INC., Number 3 Forest Glen, Huntsville, Texas 77340, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11844-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11844-001 will replace the existing TNRCC Permit Number 11844-001. The plant site is located approximately 6 miles southeast of the intersection of U.S. Highway 190 and Farm-to-Market Road 2296 in Walker County, Texas. The treated effluent is discharged to Johnson Creek; thence to the East Fork San Jacinto River in Segment Number 1003 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for Johnson Creek. The designated uses for Segment Number 1003 are high aquatic life use, public water supply and contact recreation.

CITY OF TEAGUE AND CITY OF FAIRFIELD, 222 South Mount Street, Fairfield, Texas 75840, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 13579-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 1.1 miles south of the intersection of U.S. Highway 84 and Boyd Prison Road and approximately 3.4 miles southwest of the intersection of U.S. Highway 84 and Interstate Highway 45 in Freestone County, Texas. The treated effluent is discharged to an unnamed tributary of Upper Keechi Creek; thence to Upper Keechi Creek; thence to the Trinity River Above Lake Livingston in Segment Number 0804 of the Trinity River Basin. The unclassified receiving waters uses are no significant aquatic life use for the unnamed tributary of Upper Keechi Creek. The designated uses for Segment Number 0804 are high aquatic life uses and contact recreation.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 30 DAYS AFTER NEWSPAPER PUBLICATION OF THE NOTICE.**

RAYFORD ROAD MUNICIPAL UTILITY DISTRICT, 1100 Louisiana Street, Suite 400, Houston, Texas 77002, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 12030-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 650,000 gallons per day to an annual average flow not to exceed 1,300,000 gallons per day. The proposed amendment also requests a variance to the buffer zone requirements. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12030-001 will replace the existing NPDES Permit Number TX0078263 issued on July 22, 1994 and TNRCC Permit Number 12030-001. The plant site is located north of Rayford Road, approximately 2.1 miles east of the intersection of Rayford Road and Interstate Highway 45 in Montgomery County, Texas. The treated effluent is discharged to Montgomery County Drainage District Number 6 Channel IIDF (Sam Bell Gully); thence to Spring Creek in Segment Number 1008 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for Montgomery County Drainage District Number 6 Channel IIDF (Sam Bell Gully). The designated uses for Segment Number 1008 are contact recreation, high aquatic life uses and public water supply. No significant degradation of high quality receiving waters is anticipated.

CHARLES WILLIAM RICHEY, 24723 Stuebner Airline Road, Tomball, Texas, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14004-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The plant site is located on the west side of Stuebner Airline Road approximately 0.35 mile south of the intersection of Huffsmith Road and Stuebner Airline Road in Harris County, Texas. The treated effluent is discharged to Harris County Flood Control Ditch Number M112; thence to Willow Creek; thence to Spring Creek in Segment Number 1008 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for Harris County Flood Control Ditch Number M112. The designated uses for Segment Number 1008 are high aquatic life uses, public water supply, and contact recreation. No significant degradation of high quality receiving waters is anticipated.

AVALON WATER SUPPLY AND SEWER SERVICE CORPORATION, P.O. Box 88, Avalon, Texas 76623, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13981-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day in the Interim phase and 25,000 gallons per day in the Final phase. The wastewater treatment facility serves the community of Avalon and was previously permitted under Permit Number 11022-001 which was allowed to expire. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13981-001 will replace the existing NPDES Permit Number TX0020567 issued on November 15, 1991. The plant site is located approximately 1,100 feet west of State Highway 55 and approximately 1900 feet south of the intersection of State Highway 34 and State Highway 55 in the community of Avalon in Ellis County, Texas. The treated effluent is discharged to an unnamed tributary containing a small man-made reservoir; thence to Chambers Creek Above Richland-Chambers Reservoir in Segment Number 0814 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary. The designated uses for Segment Number 0814 are high aquatic life uses, public water supply, and contact recreation. No significant degradation of high quality receiving waters is anticipated since no high quality waters have been identified in the vicinity of the discharge and existing uses will be maintained and protected.

HARRIS-FORT BEND COUNTIES MUNICIPAL UTILITY DISTRICT NO. 3, c/o Schwartz, Page & Harding, 1300 Post Oak Blvd., Suite 1400, Houston, Texas 77056, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12498-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 430,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12498-001 will replace the existing NPDES Permit Number TX0094692 issued on February 13, 1998 and TNRCC Permit Number 12498-001. The plant site is located approximately 2 miles generally east from the intersection of Farm-to-Market Road 1463 and Interstate Highway 10, and approximately 4,200 feet south of Interstate Highway 10 and 800 feet east of Katy-Fort Bend Road in Harris and Fort Bend Counties, Texas. The treated effluent is discharged via a pipeline to a Flood Control ditch; thence to Buffalo Bayou Above Tidal in Segment Number 1014 of the San Jacinto River Basin. The unclassified receiving water has no significant aquatic life uses for the ditch. The designated uses for Segment Number 1014 are limited aquatic life uses and contact recreation.

WHARTON COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 2, P.O. Box 639, East Bernard, Texas 77435, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14019-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located approximately one mile east of the intersection of U.S. Highway 90A and State Highway 60, 200 feet west of a braided portion of the San Bernard River in Wharton County, Texas. The treated effluent is discharged to the San Bernard River Above Tidal in Segment Number 1302 of the Brazos-Colorado Coastal Basin. The designated uses for Segment Number 1302 are high aquatic life uses, public water supply and contact recreation. No significant degradation of high quality receiving waters is anticipated.

HAPPY HILL FARM CHILDREN'S HOME, INC., HC 51, Box 56, Granbury, Texas 76048, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to Permit Number 11638-001, to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 7,000 gallons per day to a daily average flow not to exceed 20,000 gallons per day and to decrease the acreage irrigated from 40 acres to 31 acres of agriculture land used for hay and pasture. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 2.0 miles northeast of the intersection of U.S. Highway 67 and State Highway 144 in Somerville County, Texas. The plant site and disposal area are located in the drainage basin of Brazos River Below Lake Granbury in Segment Number 1204 of the Brazos River Basin.

BALCONES DEVELOPMENT, LTD., P.O. Box 90699, Austin, Texas 78709, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14017-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The plant site is located approximately 3,500 feet south and 1.4 miles west of the intersection of U. S. Highway 290 and County Line Road, west of the community of Elgin in Travis County, Texas. The treated effluent will be discharged to Elm Creek, thence to Dry Creek, thence to Wilbarger Creek, thence to the Colorado River Above La Grange in Segment Number 1434 of the Colorado River Basin. The unclassified receiving water uses are no significant aquatic life uses for Elm Creek and Dry Creek. The designated uses for Segment Number 1434 are exceptional aquatic life uses, public water supply, and contact recreation. No significant degradation of high quality receiving waters is anticipated.

HAOJEY, LTD., 7001 Corporate Drive, # 251, Houston, Texas 77036, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13066-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13066-001 will replace the existing TNRCC Permit Number 13066-001. The plant site is located at 2421 Greens Road, approximately 1/4 mile east of the intersection of Greens Road and Aldine-Westfield Road, in the City of Houston in Harris County, Texas. The treated effluent is discharged to an unnamed tributary; thence to the Harris County Flood Control Ditch (HCFCD) P140-00-00; thence to Greens Bayou Above Tidal in Segment Number 1016 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary and HCFCD P140-00-00. The designated uses for Segment Number 1016 are limited aquatic life use and contact recreation.

CITY OF KEENE, 100 N. Mockingbird, Keene, Texas 76059, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10611-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 830,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10611-002 will replace the existing NPDES Permit Number TX0106291 issued on August 19, 1996 and TNRCC Permit Number 10611-002 issued on January 22, 1996. The plant site is located approximately 0.6 mile south of U.S. Highway 67 on the east side of County Road 318 at its intersection with State Highway 3136 in Johnson County, Texas. The treated effluent is discharged to Turkey Creek; thence to Lake Alvarado; thence to Turkey Creek;

thence to North Fork Chambers Creek; thence to Chambers Creek Above Richland-Chambers Reservoir in Segment Number 0814 of the Trinity River Basin. The unclassified receiving water uses are intermediate aquatic life uses for Turkey Creek. The designated uses for Segment Number 0814 are high aquatic life uses, public water supply, and contact recreation.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 4, 1100 Louisiana Street, Suite 400, Houston, Texas 77002, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 12119-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a reduced daily average flow not to exceed 400,000 gallons per day. The plant site is located at 4127 Westheimer Place on the south bank of Brays Bayou, approximately 1 mile east of the intersection of Farm-to-Market Road 1093 and Farm-to-Market Road 1464 in Harris County, Texas. The treated effluent is discharged to Brays Bayou Tidal; thence to the Houston Ship Channel/Buffalo Bayou in Segment Number 1007 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for Brays Bayou Tidal. The designated uses for Segment Number 1007 are no significant aquatic life uses, industrial water supply and navigation.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 36, c/o Winstead, Sechrest & Minick, 2400 Bank One Center, 910 Travis Street, Houston, Texas 77002-5895, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 13573-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located 210 feet north northwest of the intersection of Seals Gully and Louetta Road and approximately 12,600 feet west of the intersection of Interstate Highway 45 and Holzwarth Road in Harris County, Texas. The treated effluent is discharged to Gully; thence to Cypress Creek in Segment Number 1009 of the Jacinto River Basin. The unclassified receiving water uses are limited aquatic life uses for Seals Gully. The designated uses for Segment Number 1009 are high aquatic life uses, public water supply and contact recreation.

QUARTERS, L.L.C., P.O. Box 1886, Wilmington, N.C. 28402, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12318-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,100 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12318-001 will replace TNRCC Permit Number 12318-001. The plant site is located in the Jacinto Port Industrial Development, approximately 1.5 miles southwest of the confluence of the Houston Ship Channel and Carpenter's Bayou in Harris County, Texas. The treated effluent is discharged to a drainage ditch; thence to the Houston Ship Channel in Segment Number 1006 of the San Jacinto River Basin. The designated uses for Segment Number 1006 are industrial water supply and navigation.

CITY OF NEW HOME, P.O. Box 274, New Home, Texas 79383, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to Permit Number 10632-001, to increase the acreage irrigated from 6 acres to 35 acres of non-public access agricultural land. The proposed amendment also requests to reduce the disposal of the treated domestic wastewater from a daily average flow not to exceed 50,000 gallons per day to a daily average flow not to exceed 30,000 gallons per day and to change the treatment method from imhoff tank to a facultative lagoon system. This permit will not authorize a discharge of pollutants into waters

in the State. The wastewater treatment facilities and disposal area are located approximately 0.25 mile northwest of the intersection of Farm-to-Market Road 1730 and State Highway 211 in Lynn County, Texas. The plant site and disposal area are located in the drainage basin of Double Mountain Fork Brazos River in Segment Number 1241 of the Brazos River Basin.

KINGS MANOR MUNICIPAL UTILITY DISTRICT, c/o Paul A. Philbin & Associates, P.C., 6363 Woodway, Suite 725, Houston, Texas 77057, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13526-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13526-001 will replace the existing NPDES Permit Number TX0105996 issued on July 21, 1995 and TNRCC Permit Number 13526-001. The plant site is located 0.6 mile northeast of the intersection of State Highway Loop 494 and Kingwood Drive in Harris County, Texas. The treated effluent is discharged to a series of Harris County Flood Control District Ditches; thence to Lake Houston in Segment Number 1002 of the San Jacinto River Basin. The unclassified receiving water have no significant aquatic life uses for Harris County Flood Control District Ditches. The designated uses for Segment Number 1002 are high aquatic life uses, public water supply, contact recreation

TESORO MARINE SERVICES, INC., P.O. Box 1018, Galveston, Texas 77553-1018, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10931-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10931-001 will replace the existing TNRCC Permit Number 10931-001 issued on May 31, 1996. The plant site is located in the southeast portion of Pelican Island, adjacent to the Galveston Channel, approximately 6,000 feet east of the Todd Shipyards in Galveston County, Texas. The wastewater is discharged to Lower Galveston Bay in Segment Number 2439 of the Bays and Estuaries. The designated uses for Segment Number 2439 are high aquatic life, oyster water and contact recreation uses.

FRONTERA GENERATION LIMITED PARTNERSHIP AND CSW SERVICES INTERNATIONAL, Inc., P.O. Box 660789, Dallas, Texas 75266-0789, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04051, to authorize the discharge of stormwater, low volume waste and cooling tower blowdown at a daily average flow not to exceed 1,240,000 gallons per day via Outfall 001. The applicant proposes to operate a steam electric station. The plant site is located one mile south of the intersection of U.S. Business Highway 83 and State Highway 492, Hidalgo County, Texas. The effluent is discharged to a Hidalgo County drainage ditch; thence to the Main Floodway; thence to the Arroyo Colorado above Tidal, in Segment Number 2202 of the Nueces-Rio Grande Coastal Basin. The unclassified receiving waters have no significant aquatic life use for the Hidalgo County drainage ditch. The designated uses for Segment Number 2202 are intermediate quality aquatic life use and contact recreation. No significant degradation of high quality receiving waters is anticipated.

JAMES WILLIAM HARTMAN, 12202 Gaylawood, Houston, Texas 77066, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14001-001, to authorize the discharge of treated domestic wastewater at a daily

average flow not to exceed 4,000 gallons per day. The plant site is located 200 feet northeast of the intersection of the northbound frontage road off U.S. Highway 59 and Little York Road north of the City of Houston in Harris County, Texas. The treated effluent is discharged to a roadside drainage ditch; thence to HCFC D C118-14-00; thence to Halls Bayou; thence to the Houston Ship Channel Tidal in Segment Number 1006 of the River Basin. The unclassified receiving water uses are no significant aquatic life uses for the roadside drainage ditch. The designated uses for Segment Number 1006 are navigation and industrial water supply.

CORRUGATED SERVICES, INC., P.O. Box 847, Forney, Texas 75126, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 02309, which authorizes the discharge of a volume not to exceed 11,000,000 gallons per year via evaporation. The applicant operates a recycling facility that recycles 100% old corrugated containers into corrugating medium and linerboard. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located approximately 4,000 feet east of the intersection of Highway 80 and Farm-to-Market Road 1641 and 2,000 feet south of Highway 80, and approximately one mile east of the City of Forney, Kaufman County, Texas. The plant site and disposal area are located in the drainage basin of Buffalo Creek in Segment Number 0819 of the Trinity River Basin.

CLINT INDEPENDENT SCHOOL DISTRICT, P.O. Box 779, Clint, Texas 79836, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, Proposed Permit Number 14005-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 7,050 gallons per day via subsurface drip irrigation on 1.62 acres of nonpublic access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located just north of Montana Avenue on O'Shea Road, approximately 3.3 miles east-northeast of the intersection of Zaragosa Road (State Highway 659) and Montana Avenue (U.S. Highway 62/180) in El Paso County, Texas. The plant site and disposal area are located in the drainage basin of Rio Grande Below Riverside Diversion Dam in Segment Number 2307 of the Rio Grande Basin.

TEXAS INSTRUMENTS, INC., P.O. Box 10508, Lubbock, Texas, 79408-3508, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit 02621, which authorizes the disposal of supernatant of acid-neutralization tank clarifier at a daily average flow not to exceed 7,200 gallons per day via evaporation. The applicant operates an integrated circuits manufacturing plant. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located northwest corner of the intersection of Loop 289 and University Avenue in the City of Lubbock, Lubbock County, Texas. The plant site and disposal area are located in the drainage basin of the Double Mountain Fork Brazos River, in Segment Number 1241 of the Brazos River Basin.

CITY OF VAN ALSTYNE, P.O. Box 247, Van Alstyne, Texas 75095-0247, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 10502-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 210,000 gallons per day. The plant site is located approximately 1/4 mile south of Farm-to-Market Road 121 on an unnamed rock road and 2 miles east of the intersection of State Highway 5 and Farm-to-Market 121 in Grayson County, Texas. The treated effluent is discharged to an unnamed tributary; thence to the West Prong of Sister Grove Creek; thence to Sister Grove Creek; thence to Lake Lavon in Segment Number 0821 of the Trinity

River Basin. The unclassified receiving water uses are no significant aquatic life uses for the Unnamed tributary. The designated uses for Segment Number 0821 are high aquatic life uses, public water supply and contact recreation.

DAIRY FARMERS OF AMERICA, Inc., P.O. Box 176, Schulenberg, Texas 78956, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 01664, which authorizes the disposal of cooling tower blowdown, rinsate, and treated wash down water at a daily average flow not to exceed 26,000 gallons per day and a daily maximum flow not to exceed 52,000 gallons per day via irrigation of 17 acres of land. The applicant operates a plant that manufactures processed cheese dip and salsa products. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located on the northwest corner of James and Simpson Streets, approximately 2/3 mile west of Interstate Highway 77, in the City of Schulenberg, Fayette County, Texas. The facility and disposal site are located in the drainage area of Segment 1605 of the Lavaca River Basin

FAIRBANKS PLAZA SHOPPING CENTER, L.P., 4265 San Felipe, suite 650, Houston, Texas 77027, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 12139-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The plant site is located approximately 600 feet southwest of the intersection of Fairbanks-North Houston Road and Northwest Freeway (U.S. Highway 290) in City of Houston in Harris County, Texas. The treated effluent is discharged to an unnamed tributary; thence to Cole Creek; thence to White Oaks Bayou Above Tidal in Segment Number 1017 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary. The designated uses for Segment Number 1017 are limited aquatic life uses and contact recreation.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 34, c/o ECO Resources, 14829 Bellaire Boulevard Suite 9, Bellaire, Texas 77083, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 12298-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 2.1 miles east-northeast of the intersection of Farm-to-Market Roads 1093 and 723 in Fort Bend County, Texas. The treated effluent is discharged to Little Prong Creek; thence to Buffalo Bayou Above Tidal (unclassified); thence to Buffalo Bayou Above Tidal in Segment Number 1014 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for Little Prong Creek. The designated uses for Segment Number 1014 are limited aquatic life uses and contact recreation.

CITY OF SHERMAN, P.O. Box 1106, Sherman, Texas 75091-1106, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 10329-001 to authorize an increase in the discharge of treated domestic wastewater from the current daily average flow not to exceed 12,000,000 gallons per day to an annual average flow not to exceed 16,000,000 gallons per day. The amended permit would also authorize sewage sludge marketing and distribution. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10329-001 will replace the existing NPDES Permit Number TX0024325 issued on July 21, 1995 and TNRCC Permit Number 10329-001 issued on November 22, 1993, and amended on November 21, 1997. The plant site is located south of the Farm-to-Market Road 1417 Bridge over Post Oak Creek on the west side of Post Oak Creek southeast of the City of Sherman in Grayson County,

Texas. The treated effluent is discharged to Post Oak Creek; thence to Choctaw Creek; thence to the Red River Below Lake Texoma in Segment Number 0202 of the Red River Basin. The unclassified receiving water uses are limited aquatic life uses for Post Oak Creek and intermediate aquatic life uses for Choctaw Creek. The designated uses for Segment Number 0202 are contact recreation, high aquatic life uses and public water supply. No significant degradation of high quality receiving waters is anticipated

STEVENS WATER COMPANY, Route 8, Box 476, Livingston, Texas 77351, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14014-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located approximately 500 feet east of U.S. Highway 59, approximately 1 mile south of the intersection of U.S. Highway 59 and Farm-to-Market Road 1988, approximately 3 miles south of the intersection of U.S. Highway 59 and State Highway 190 in Polk County, Texas. The treated effluent is discharged to Crooked Creek; thence to Long King Creek; thence to the Trinity River Below Lake Livingston in Segment Number 0802 of the Trinity River Basin. The unclassified receiving water uses are high aquatic life uses for both Crooked Creek and Long King Creek. The designated uses for Segment Number 0802 are high aquatic life uses, public water supply and contact recreation. No significant degradation of high quality receiving waters is anticipated.

CITY OF MONTGOMERY, P.O. Box 708, Montgomery, Texas 77356, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11521-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11521-001 will replace the existing NPDES Permit Number TX0056693 issued on November 1, 1997 and TNRCC Permit Number 11521-001 issued March 15 1996. The plant site is located north of the City of Montgomery, approximately 4000 feet north of the intersection of Farm-to-Market Road 149 and State Highway 105, just west of the point where Farm-to-Market Road crosses Town Creek in Montgomery County, Texas. The treated effluent is discharged to Town Creek, thence to Atkins Creek; thence to Lake Conroe in Segment Number 1012 of the San Jacinto River Basin. The unclassified receiving water uses are limited aquatic life uses for Town Creek. The designated uses for Segment Number 1012 are high aquatic life uses, public water supply and contact recreation.

TOWN OF LINDSAY, P.O. Box 153, Lindsay, Texas 76250-0153, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10923-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 66,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10923-001 will replace the existing NPDES Permit Number TX0025097 issued on March 3, 1995 and TNRCC Permit Number 10923-001 issued on June 7, 1996. The plant site is located at 100 Sycamore Street, approximately 600 feet east of the Farm-to-Market Road 3108 bridge over Elm Fork Trinity River, southeast of the Town of Lindsay in Cooke County, Texas. The treated effluent is discharged to Elm Fork Trinity River Above Ray Roberts Lake in Segment Number 0824 of the Trinity River Basin. The designated uses for Segment Number 0824 are high aquatic life uses, public water supply, and contact recreation.

MINSA SOUTHWEST CORPORATION, P.O. Box 484, Muleshoe, Texas, 79347, has applied to the Texas Natural Resource Conservation

Commission (TNRCC) for a major amendment of Permit Number 03032 to authorize an increase in the daily average flow for irrigation from 80,000 gallons per day to 300,000 gallons per day and to increase the irrigation acreage from 49 acres to 86.5 acres. The current permit authorizes the disposal of industrial wastewater from milling corn flour at a daily average flow not to exceed 80,000 gallons per day via irrigation of 49 acres. The applicant operates a masa (corn) flour manufacturing plant. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located adjacent to U.S. Highway 84, approximately 1.8 miles southeast of the intersection of U.S. Highway 84 and U.S. Highway 70, and approximately 1.5 miles southeast of the City of Muleshoe, Bailey County, Texas. The plant site and disposal area are located in the drainage basin of Black Water Draw which is a tributary of the Double Mountain Fork Brazos River, in Segment Number 1241, of the Brazos River Basin

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 104, c/o Smith, Murdaugh, Little & Bonham, 1100 Louisiana Street, Suite 400, Houston, Texas 77002, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 11925-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 350,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11925-001 will replace the existing NPDES Permit Number TX0074632 issued on May 14, 1993 and TNRCC Permit Number 11925-001 issued on October 1, 1993. The plant site is located approximately 5,500 feet west of Interstate Highway 45 and 2.1 miles northwest of the intersection of Farm-to-Market Road 1960 and Interstate Highway 45, on the east bank of Seals Gully (Harris County Flood Control Ditch K124-00-00) in Harris County, Texas. The treated effluent is discharged via a pipe to Seals Gully (Harris County Flood Control Ditch K124-00-00); thence to Cypress Creek in Segment Number 1009 of the San Jacinto River Basin. The unclassified receiving water uses are limited aquatic life uses for Seal Gully (HCFCD K124-00-00). The designated uses for Segment Number 1009 are contact recreation, high aquatic life uses and public water supply. No significant degradation of high quality receiving waters is anticipated.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 104, c/o Smith, Murdaugh, Little & Bonham, 1100 Louisiana Street, Suite 400, Houston, Texas 77002, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 11925-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 350,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11925-001 will replace the existing NPDES Permit Number TX0074632 issued on May 14, 1993 and TNRCC Permit Number 11925-001 issued on October 1, 1993. The plant site is located approximately 5,500 feet west of Interstate Highway 45 and 2.1 miles northwest of the intersection of Farm-to-Market Road 1960 and Interstate Highway 45, on the east bank of Seals Gully (Harris County Flood Control Ditch K124-00-00) in Harris County, Texas. The treated effluent is discharged via a pipe to Seals Gully (Harris County Flood Control Ditch K124-00-00); thence to Cypress Creek in Segment Number 1009 of the San Jacinto River Basin. The unclassified receiving water uses are limited aquatic life uses for Seal Gully (HCFCD K124-00-00). The designated uses for Segment Number 1009 are contact recreation, high aquatic life uses and public water

supply. No significant degradation of high quality receiving waters is anticipated.

LIPAR GROUP, INC., c/o Powers Engineering, 3706 West Davis, Conroe, Texas 77304, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14029-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The plant site is located approximately 2,600 feet north of State Highway 242, approximately 2.2 miles east of the intersection of State Highway 242 and Farm-to-Market Road 1314, approximately 10 miles southeast of the City of Conroe in Montgomery County, Texas. The treated effluent is discharged to an unnamed drainage way; thence to Dry Creek; thence to Caney Creek in Segment Number 1010 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for the natural drainage channel and high aquatic life uses for Dry Creek. The designated uses for Segment Number 1010 are contact recreation, high aquatic life uses and public water supply. No significant degradation of high quality receiving waters is anticipated.

CITY OF WOLFE CUTUP Box 106, Wolfe City, Texas 75496, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10383-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 195,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10383-001 will replace the existing NPDES Permit Number TX023558 issued on July 29, 1994 and TNRCC Permit Number 10383-001 issued on June 25, 1993. The plant site is located adjacent to Oyster Creek approximately 0.5 miles south of Wolfe City and 0.3 miles east of State Highway 34 in Hunt County, Texas. The treated effluent is discharged to Oyster Creek; thence to Upper South Sulphur River in Segment Number 0306 of the Sulphur River Basin. The unclassified receiving water uses are no significant aquatic life uses for Oyster Creek. The designated uses for Segment Number 0306 are intermediate aquatic life uses and contact recreation

ANTHONY J. RIEDEL, 8038 Fallbrook Drive, Houston, Texas 77064, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13939-001 (formerly TNRCC Permit Number 02798), which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13939-001 will replace the existing NPDES Permit Number TX0082988 issued on February 21, 1980 and TNRCC Permit Number 13939-001 (formerly TNRCC Permit Number 02798). The plant site is located approximately 400 feet north of 8038 Fallbrook Drive, at a point approximately 1.25 miles west of State Highway 249 in Harris County, Texas. The treated effluent is discharged to a roadway storm sewer; thence to Harris County Flood Control Ditch E122-00-00; thence to Whiteoak Bayou; thence to Whiteoak Bayou Above Tidal in Segment Number 1017 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life use for Harris County Flood Control Ditch E122-00-00. The designated uses for Segment Number 1017 are limited aquatic life use and contact recreation.

PIRATES COVE WATER SUPPLY AND SEWER SERVICE CORPORATION, 500 West 6th Street, Suite 200, Austin, Texas 78701, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13992-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 17,000 gallons per day. The wastewater treatment

facility serves the Pirates Cove Condominiums and was previously permitted under TNRCC Permit Number 12553-001 which was allowed to expire. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13992-001 will replace the existing NPDES Permit Number TX0090468 issued on July 29, 1988. The plant site is located approximately 1250 feet south of State Highway 185 between 15th and 16th Streets in the City of Port O'Connor in Calhoun County, Texas. The treated effluent is discharged via pipeline to the Intracoastal Waterway; thence to Espiritu Santo Bay in Segment Number 2461 of the Bays and Estuaries. The unclassified receiving water uses are high aquatic life uses for the Intracoastal Waterway. The designated uses for Segment Number 2461 are exceptional aquatic life uses, oyster waters, and contact recreation. No significant degradation of high quality receiving waters is anticipated.

GALVESTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 6, 802 Tiki Drive, Route 2, Village of Tiki Island, Galveston, Texas 77554-9157, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 10879-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 320,000 gallons per day. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10879-001 will replace the existing TNRCC Permit Number 10879-001 issued on September 18, 1992. The plant site is located on the eastern end of Wilson Point in West Bay in Galveston County, Texas. The treated effluent is discharged to a channel connecting West Bay and Jones Bay in Segment Number 2424 of the Bays and Estuaries. The designated uses for Segment Number 2424 are contact recreation, high aquatic life uses and oyster waters. No significant degradation of high quality receiving waters is anticipated.

LOUISIANA PACIFIC CORPORATION, P.O. Box 70, Moscow, Texas 75960, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04015, to authorize the discharge of facility wastewater at a daily average flow not to exceed 80,000 gallons per day via Outfall 001. The applicant operates a wood chipping plant. The plant site is located on the west side of U.S. Highway 59 approximately 1.8 miles north of the intersection of U.S. and Farm to Market Road 350 north of the town of Moscow, Polk County, Texas. The effluent is discharged to an unnamed drainage ditch, then to unnamed tributary, then to Brushy Creek, then to Kenedy Creek, then to McManus Creek, then to Piney Creek, then to the Neches River Below Lake Palestine in Segment No 0604 of the Neches River Basin. The unclassified receiving waters have no significant aquatic life use for the unnamed drainage ditch, unnamed tributary of Brushy Creek, and the intermittent streams. The designated uses for Segment No 0604 are high quality aquatic life use, contact recreation, and public water supply. No significant degradation of high quality receiving waters is anticipated.

TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO 4, c/o Strasburger & Price, 600 Congress Avenue, Suite 2600, Austin, Texas 78701, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to Permit Number 13206-001, to authorize an increase in the disposal of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 720,000 gallons per day; to authorize an increase in the amount of acreage irrigated with treated domestic wastewater from 103.7 acres to 298.7 acres. This

permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 5.5 miles northeast of the intersection of State Highway 71 and Farm to Market Road 22474 and 0.5 mile north of Barton Creek in Travis County, Texas. The disposal site is located in the drainage area of Barton Creek in Segment Number 1430 of the Colorado River Basin

CITY OF GRANDVIEW, P.O. Box 425, Grandview, Texas 76050, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of the TNRCC Permit Number 10180-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10180-001 will replace the existing NPDES Permit Number TX0024503 issued on December 1, 1996 and TNRCC Permit Number 10180-001 issued on May 24, 1996. The plan site is located on the north side of County Road 102, approximately 1.5 miles southeast of the City of Grandview in Johnson County, Texas. The treated effluent is discharged to Island Creek; thence to Chambers Creek Above Richland-Chambers Reservoir in Segment Number 0814 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life uses for Island Creek. The designated uses for Segment Number 0814 are high aquatic life uses, public water supply and contact recreation.

TEXAS WATER SERVICES, INC., 6116 North Central Expressway, Suite 1300, Dallas, Texas 75206, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14055-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located approximately 1,400 feet northwest of the Searcy Cemetery and approximately 0.9 mile northeast of the intersection of State Highway 154 and Farm-to-Market Road 288 in Wood County, Texas. The treated effluent is discharged to Searcy Branch; thence to Lake Fork Reservoir in Segment Number 0512 of the Sabine River Basin. The unclassified receiving water uses are no significant aquatic life uses for Searcy Branch. The designated uses for Segment Number 0512 are high aquatic life uses, public water supply and contact recreation. No significant degradation of high quality receiving waters is anticipated.

T. L. VENTURES, INC., P.O. Box 656, Justin, Texas 76247, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, Proposed Permit Number 14021-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day via irrigation of 10 acres of land in the interim I phase, 10,000 gallons per day via irrigation of 20 acres of land in the interim II phase and 15,000 gallons per day via irrigation of 30 acres of land in the final phase. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 8,500 feet east-southeast of the intersection of Farm-to-Market Road 156 and Farm-to-Market Road 407 in the City of Justin in Denton County, Texas. The plant site and disposal area are located in the drainage basin of Grapevine Lake in Segment Number 0826 of the Trinity River Basin.

Notice of Concentrated Animal Feeding Operation Applications.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of Chief Clerk, at the address provided in the information section

above, WITHIN 30 DAYS AFTER THE NEWSPAPER PUBLICATION OF THE NOTICE.

GERARD HOEKMAN AND NANNE DEVRIES, Route 2, Box 161, Dublin, Texas, 76446 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for renewal of Permit Number 03575 to authorize the applicant to operate an existing dairy operation at a maximum capacity of 450 head in Comanche County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All wastewater will be beneficially used on agricultural land. The existing facility is located on the north side of an unnamed County Road approximately 5 miles east of the intersection of State Highway 36 and U.S. Highway 67 in Comanche County, Texas. The facility is located in the drainage area of the Leon River below Proctor Lake in Segment 1221 of the Brazos River Basin.

DOUWE PLANTINGA, Route 2, Box 416, Mt. Vernon, Texas, 75457 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 04056 to authorize the applicant to operate a dairy facility at a maximum capacity of 990 head in Franklin County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The dairy facility is located on the north side of Farm-to-Market Road 900 approximately 2.3 miles west of the intersection of Farm-to-Market Road 900 and State Highway 37, this intersection is approximately 5 miles south of the intersection of State Highway 37 and Interstate Highway 30 in Franklin County, Texas. The facility is located in the drainage area of Sulphur/South Sulphur River in Segment Number 0303 of the Sulphur River Basin.

LARRY OGLE, P.O. Box 1126, Bowie, Texas, 76230 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 04034 to authorize the applicant to operate an existing beef cattle operation at a maximum capacity of 2000 head in Montague County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located approximately 0.6 miles northwest on the south service road of U.S. Highway 287 from its intersection with Highway 59 in Bowie, Texas to County Road 148 (feed pen road). Facility is located on the north side of CR 148. The facility is located in the drainage area of Lake Amon G. Carter in Segment Number 0834 of the Trinity River Basin.

ROBERT WILKERSON, Route 2, Box 246, DeLeon, Texas, 76444 and JOHAN DE BOER, Route 2, Box 249AA, DeLeon, Texas 76444, have applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 04065 to authorize the applicant to operate a dairy facility at a maximum capacity of 400 head in Comanche County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The dairy facility is located on the west side of Texas Highway 16 approximately 6.2 miles south of the intersection of Texas Highway 16 and Texas Highway 6 in Comanche County, Texas. The facility is located in the drainage area of Proctor Lake in Segment Number 1222 of the Brazos River basin.

HENK KENKHUIS, Route 5 Box 138, Dublin, Texas, 76446 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for an amendment to TPDES Permit Number 03163 to authorize the applicant to operate an existing dairy facility at a maximum capacity of 1,200 head in Comanche and Erath Counties, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located

on the south side of the intersection of State Highway 219 and Pecan Cemetery Road in Comanche and Erath Counties, Texas. The facility is located in the drainage area of the Leon River below Lake Proctor in Segment Number 1221 of the Brazos River Basin.

KENNETH SIMPSON, Star route, Box 43, Nemo, Texas, 76070 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for an amendment to Permit Number 02386 to authorize the applicant to expand an existing dairy operation to a maximum capacity of 500 head in Johnson County, Texas. No discharge of pollutants into the waters of the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the south side of U.S. Highway 67 approximately thirteen miles west of the intersection of U.S. Highway 67 and State Highway 171 in Johnson County, Texas. The facility is located in the drainage area of the Brazos River below Lake Granbury in Segment 1204 of the Brazos River Basin.

LAURENCE CLOWDUS, Route 3, Box 95, Alvarado, Texas, 76009 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 04027 to authorize the applicant to operate a dairy facility at a maximum capacity of 250 head in Johnson County, Texas. No discharge of pollutants into the waters of the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The dairy facility is located on the north side of County Road 707 and Interstate Highway 35 in Johnson County, Texas. The facility is located in the drainage area of Chambers Creek above Richland-Chamber Reservoir in Segment Number 0814 of the Trinity River Basin.

CLAY AND TATE PRICE, Route 4, Box 88, Sulphur Springs, Texas, 75482 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 03975 to authorize the applicant to operate a new dairy operation at a maximum of 400 head in Hopkins County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The proposed facility will be located on the east side of FM 2653 approximately 1/3 mile south of the intersection of FM 2653 and State Highway 11 in Ridgeway, Texas. The facility will be located in the drainage area of Sulphur/South Sulphur River in Segment Number 0303 of the Sulphur River Basin.

TRD-9902157

LaDonna Castanuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: April 13, 1999



Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued April 1 thru 7, 1999.

Temporary Permit Number TP-8077 by Armadigger, Inc. for diversion of 1 acre-feet in a 1-year period for mining (water well drilling) use. Water may be diverted from 3 different diversion points, the first 2 are located on Hondo Creek, Tributary of Frio River, tributary of Nueces River, Nueces River Basin at the points where Hondo Creek crosses state highway 462 directly below the intersection of state highway 462 and the low water crossing approximately 7 miles North of Hondo and 19 miles Northwest of Castroville with the 3rd located on Verde Creek, tributary of Hondo Creek at a point where Verdi Creek crosses state highway 173 directly above intersection of state highway 173 and state highway 2676

approximately 3 mile Northeast of Hondo and 14 miles Northwest of Castroville for mining purposes (water well drilling) in Medina County.

Temporary Permit Number TP-8080 by Harris County Flood Control District for diversion of 8 acre-feet in a 1-year period for irrigation (flood control irrigation and dust control) purposes. Water may be diverted from near a point where Langham Creek crosses West Little York Road approximately 19 miles Northwest of Houston and 11 miles Northeast of Katy in Harris County, Texas.

Temporary Permit Number TP-8081 by Texas Utilities Pipeline Services for diversion of 1 acre-feet in a 1-year period for industrial and mining (bore under Tehuacana Creek and Hydrostatically test pipeline) use. Water may be diverted from near a point where Tehuacana Creek crosses the TUPS ROW approximately .6 miles Southeast of Waco and 6 miles West of Neale in McLennan County, Texas.

Temporary Permit Number TP-8082 by Hunter Industries, Inc. for diversion of 1 acre-feet in a 1-year period for industrial (road construction) use. Water may be diverted from near a point where Yow Creek crosses SH 97 approximately 10 miles Southwest of Gonzales and 2.2 miles Southwest of Bebe in Gonzales County, Texas.

Temporary Permit Number TP-8084 by Nueces County Department of Public Works for diversion of 1 acre-feet in a 1 year period for industrial (road treatment) use. Water may be diverted from 6 different diversion points, the first located at the intersection of SH 286 and Oso Creek, tributary of West Oso Creek, Nueces-Rio Grande River Basin approximately 5 miles Southeast of Corpus Christi and 7.5 miles Southwest of Ward Island, the 2nd located at the intersection of FM 70 and Petronila Creek, tributary of Agua Dulce Creek, Nueces-Rio Grande River Basin approximately 14.5 Southwest of Corpus Christi and 9.5 miles Southeast of Driscoll, the 3rd located at the intersection of FM 666 and Carreta Creek, Nueces-Rio Grande River Basin approximately 23.5 miles Southwest of Corpus Christi and .75 miles West of Bishop, the 4th located at the intersection of FM 666 and Pintas Creek, tributary of San Fernando Creek, tributary of San Diego Creek, Nueces-Rio Grande River Basin approximately 22 miles Southwest of Corpus Christi and 8.5 miles Northwest of Bishop, the 5th located at the intersection of FM 666 and Agua Dulce Creek, Nueces-Rio Grande River Basin approximately 18 miles West of Corpus Christi and 13 miles North of Bishop, and the 6th located directly East of Knolle on the Nueces River, Nueces-Rio Grande River Basin, approximately 22.5 miles NW of Corpus Christi and 14 miles Northeast of Agua Dulce for industrial purposes (road treatment) in Nueces County, Texas.

Temporary Permit Number TP-8085 by Armadigger, Inc. for diversion of 1 acre-feet in a 1 year period for mining (water well drilling) use. Water may be diverted from 5 different diversion points, the first located at the intersection of SH 16 and Benton Creek, tributary of Medina River, San Antonio River Basin approximately 13 miles Northwest of Bandera and 18 miles East of Lost Maples State Natural Area, the 2nd located at the intersection of FM 470 and Medina River, San Antonio River Basin approximately 1.5 miles West of Bandera and 7.5 miles NE of Hill Country State Natural Area, the 3rd located at the intersection of SH 173 and Bandera Creek, tributary of Medina River, San Antonio River Basin approximately 1 miles North of Bandera and 3.5 miles East of Montague Lake, the 4th located at the intersection of English Crossing Road and Medina River, San Antonio River Basin approximately 6 miles SouthEast of Bandera and 12.5 miles Northeast of Hill Country State Natural Area, and the 5th located at the intersection of Bump Gate Road and Red

Bluff Creek, tributary of Medina River, San Antonio River Basin approximately 10 miles Southeast of Bandera and 17 miles Northeast of Hill Country State Natural Area for mining purposes (water well drilling) in Bandera County, Texas.

Temporary Permit Number TP-8087 by Armadigger, Inc. for diversion of 1 acre-feet in a 1 year period for mining (water well drilling) use. Water may be diverted from 3 different diversion points, the first located at the intersection of SH 46 and Cibolo Creek, San Antonio River Basin approximately 3.5 miles Northwest of Fair Oaks Ranch and 3.5 miles Southeast of Boerne Lake, the 2nd located at the intersection of IH 10 and Cibolo creek, San Antonio River Basin approximately 1 miles Northwest of Boerne and .5 miles East of Boerne Lake, and the 3rd located at the intersection of Edge Falls Road and Guadalupe River, Guadalupe River Basin approximately 2 miles East of Guadalupe State Park and 11.5 miles Northeast of Boerne, for mining purposes (water well drilling) in Kendall County, Texas.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9902159

LaDonna Castanuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: April 13, 1999



Permian Basin Workforce Development Board

Legal Notice

The Permian Basin Workforce Development Board announces the release of a Request for Proposal (RFP) for Child Care Services effective April 12, 1999. All interested private not-for-profit, private for-profit or public agencies/organizations are invited to submit a proposal. The purpose of the RFP is to purchase child care management services and quality improvement activities. Child care management services include eligibility determination, referral of children for subsidized child care services, and funds management. The quality improvement activities include providing training or sub-contracting training for child care providers and purchasing materials and equipment for use by eligible child care facilities.

Services will be delivered in the 17 counties of the Permian Basin. The counties include Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, and Winkler.

The contract will be effective September 1, 1999 through August 31, 2000. Payment for these services will be on a cost reimbursement basis for expenses incurred and paid in the delivery of the contracted services. The projected available funding is 6.1 million dollars. All funding is subject to the availability of federal and state funds.

A RFP packet may be obtained beginning April 12, 1999, by contacting: Gail Dickenson Permian Basin Workforce Development Board 3016 Kermit Hwy. Odessa, TX 79764 (915) 334-5632 The deadline for submitting a proposal is May 21, 1999, at 3:00 p.m. Central Daylight Savings Time.

TRD-9902095

Willie Taylor

Executive Director

Permian Basin Workforce Development Board

Filed: April 9, 1999



Texas Department of Protective and Regulatory Services

Request for Proposal for Evaluation and Treatment Services

The Texas Department of Protective and Regulatory Services (PRS) is soliciting Evaluation and Treatment proposals for Child Protective Services (CPS) to provide, either directly or through subcontractors, the following combination of services: individual counseling/therapy, family counseling/therapy, group counseling/therapy, psychological and developmental testing, psychological evaluations, psychiatric evaluations, home-based therapy, case consultation, parenting classes, and court testimony for families with children who are at risk of abuse, or neglect, or removal from the home.

The objective of these services are to reduce and/or eliminate the risk of child abuse and neglect within the family unit.

Contractors selected may choose to serve any or all of five (5) geographic areas representative of the 30 central counties in Region 07. Catchment area designations will be listed in the request document. Client eligibility is determined by CPS staff and referrals made to the contractor. The Title IV-B funding for this contract is approximately \$1,200,000.00 and is dependent upon state and/or federal appropriation for September 1, 1999 - August 31, 2000. This contract is renewable at PRS's discretion. Eligible offerors are public or private nonprofit, or for-profit agencies, individuals and partnerships with knowledge, competence and qualifications in serving families and children who have been abused or neglected. PRS is an Affirmative Action/Equal Opportunity state agency that encourages Historically Underutilized Businesses to apply. Reimbursement to the contractor by PRS will be based on reasonable and customary rates for the geographical areas served. Contractors will be selected through a competitive multiple awards process.

An offeror's conference will be held on May 4, 1999 at 10:00 a.m. in room 1149 at 10205 N. Lamar, Austin (PRS Building).

Contact Person: A "Request for Proposal" packet may be obtained beginning April 19, 1999, by contacting: Velda Rios, PRS Procurement Officer, Mail Code 019-1, 7901 Cameron Road, Building II, Austin, Texas 78754, (512) 834-3303 or fax the Contract Unit, (512)

834-4738. Deadline for receipt of completed and modified proposals is May 20, 1999, at 4:00 p.m.

TRD-9902092

C. Ed Davis

Deputy Commissioner for Legal Services

Texas Department of Protective and Regulatory Services

Filed: April 8, 1999



Public Utility Commission of Texas

Applications to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 23, 1999, to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Add Contract Pricing for Disaster Routing, AreaWide Networking, Positive ID Services, and IntelliNumber Service Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20656.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is adding tariff provisions to allow as an option, customer specific contract pricing for Disaster Routing, AreaWide Networking, Positive ID services, and Intellinumber Service.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by April 30, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902164

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: April 13, 1999



Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 5, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Rates That Provide Free 10% Discount Optional Calling Plan To All Residence Customers Newly Subscribing To The Basics And The Works Vertical Services Pursuant to Public Utility Commission Substantive Rule §23.25. Tariff Control Number 20703.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting rates that provide free 10% Discount Optional Calling Plan to all residence customers newly subscribing to The Basics and THE WORKS vertical services packages. Existing residence customers subscribing to Basics and THE WORKS will receive the 10% Discount Optional Calling Plan free. SWBT has provided notification

of this free 10% Discount Optional Calling Plan to the Local Service Providers. SWBT requests an effective date of May 7, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 5, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902144

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: April 12, 1999



Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 7, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Promotional Rates for Business Customers Agreeing to Subscribe to SWBT's Long Distance Message Telecommunications Service (LDMTS) for Their Intralata Toll Calls Pursuant to Public Utility Commission Substantive Rule §23.25. Tariff Control Number 20714.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting promotional rates for business customers agreeing to subscribe to SWBT's Long Distance Message Telecommunications Service (LDMTS) for their intraLATA toll calls. During the promotion period of May 7, 1999 through December 31, 1999, business customers agreeing to 12-month subscriptions to SWBT LDMTS can select between two LDMTS price plans. The two promotions are the \$5.00 and 15 Promotion and the \$9.60 and 12 Promotion. The \$5.00 and 15 Promotion provides business customers for a monthly recurring charge of \$5.00, 30 minutes of long distance service and a \$.15 per minute rate over the 30 minutes. The \$9.60 and 12 Promotion provides business customers for a monthly recurring charge of \$9.60, 80 minutes of long distance and a \$.12 per minute rate over the 80 minutes. SWBT has provided notification of these LDMTS promotions to the Local Service Providers (LSP's). The LSP's will be provided the wholesale discount rate for these LDMTS promotions. SWBT requests an effective date of May 7, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 5, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902147

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: April 12, 1999



Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 9, 1999, to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule

§23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Contract Pricing for Extended Area Calling Service Plans Marketed as "Local Plus" Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20724.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting contract pricing capabilities for Extended Area Calling Service plans marketed as "Local Plus."

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 6, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902165
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 1999



Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 9, 1999, to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Promotional Rates for New Local Plus Customers Who Also Subscribe to Smart Trunk or Digital Loop Service for 24 or 36 Months Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20723.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting promotional rates for business customers who subscribe to both Local Plus and Smart Trunk or Digital Loop service between May 7, 1999 and December 31, 1999. SWBT will refer to this service combination as "Digital Plus." During the promotional period, discounted rates for the Extended Area Calling Service (EACS) plans marketed as "Local Plus" are available to new Local Plus customers that also purchase either Smart Trunk or Digital Loop Service and commit to a 24- or 36-month contract for this service combination. A discount on the Smart Trunk or Digital Loop Service will also apply. SWBT requests an effective date of May 7, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by May 5, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902166
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 1999



Notice of Application for Approval of Intralata Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 17, 1999, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Time Warner Connect-Austin for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 20635.

The Application: The intraLATA plan filed by Time Warner Connect-Austin (Time Warner Connect) provides a proposal that, upon implementation, would provide customers with the ability to route intraLATA toll calls automatically, without the use of access codes, to the telecommunications services provider of their designation.. Time Warner Connect operates as a reseller of local exchange service under a service provider certificate of operating authority. Time Warner Connect asserts, because it is a reseller of Southwestern Bell Telephone Company's (SWBT) local exchange service, Time Warner Connect lacks the technical capability to provide intraLATA equal access to its customers. Time Warner Connect affirms it will offer dialing parity for intraLATA toll calls at the time the commission requires SWBT to provide intraLATA equal access.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before April 30, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 20635.

TRD-9902086
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 6, 1999



Notice of Application Pursuant to P.U.C. Substantive Rule §23.94

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 30, 1999, pursuant to P.U.C. Substantive Rule §23.94 for approval of a rate change.

Tariff Title and Number: Application of Cameron Telephone Company-Texas for Approval of a Rate Change Pursuant to P.U.C. Substantive Rule §23.94. Tariff Control Number 20679.

The Application: Cameron Telephone Company-Texas (CTC-TX or the company) seeks approval for a minor rate change to increase its basic local service rates by 10% for business and residence customers in its Neme Exchange. The proposed increase will result in a \$.60 increase for single-line residence subscribers and an \$1.33 increase for single-line business subscribers. The company estimates the proposed rate increase will result in an increase of \$3,367.08 in intrastate gross annual revenues. CTC-TX proposes an effective date of July 1, 1999.

Subscribers of CTC-TX have a right to petition the commission for review of this proposed increase by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 19 affected local service customers, and must be received by the commission no later than May 31, 1999.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before May 31, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 20679.

TRD-9902167
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 1999



Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule §23.27 for a new PLEXAR-Custom service for Bank of the West in El Paso, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's Notice of Intent to File an Application for a New PLEXAR-Custom Service for Bank of the West in El Paso, Texas Pursuant to Public Utility Commission Substantive Rule §23.27. Tariff Control Number 20708.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for a new PLEXAR-Custom service for Bank of the West in El Paso, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the El Paso exchange, and the geographic market for this specific PLEXAR-Custom service is the El Paso LATA.

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 call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902145
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 12, 1999



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for Brownsville ISD in Brownsville, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for Brownsville ISD in Brownsville, Texas Pursuant to Public Utility Commission Substantive Rule §23.27. Tariff Control Number 20713.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for an addition to the existing PLEXAR-Custom service for Brownsville ISD in Brownsville, Texas. PLEXAR-Custom service is a central office-based PBX-type serving

arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Brownsville exchange, and the geographic market for this specific PLEXAR-Custom service is the Brownsville LATA.

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 call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902146
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 12, 1999



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application to file a customer-specific contract for Denco Area 911 District pursuant to Public Utility Commission Substantive Rule §23.27.

Tariff Title and Number: GTE Southwest, Inc. Notice of Intent to File a Customer-Specific Contract to Provide Delivery and Installation of a Network Package Unit To Be Used In Conjunction With a CML ECS 1000 Enhanced E-911 System Pursuant to Public Utility Commission Substantive Rule §23.27. Tariff Control Number 20715.

The Application: GTE-SW intends to file an application on or around April 20, 1999 to provide delivery and installation of a Network Packaged unit to be used in conjunction with a CML ECS 1000 Enhance E-911 System. GTE will provide the service in the Denton, Texas exchange at the request of the Denco Area 911 District.

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 call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9902148
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 12, 1999



Notice of Petition for a Good Cause Exemption to Public Utility Commission Substantive Rules §25.71(B)(2) and §25.73(B)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 25, 1999 for good cause exemption to P.U.C. Substantive Rules §25.71(b)(2) and §25.73(b).

Project Title and Number: Application of the Lower Colorado River Authority for a Good Cause Exemption to P.U.C. Substantive Rules §25.71(b)(2) and §25.73(b). Project Number 20667.

The Application: The Lower Colorado River Authority (LCRA) requests exemption to the requirements of P.U.C. Substantive Rules §25.71(b)(2) and §25.73(b) regarding the filing of an annual earnings

report. The commission regulates LCRA's retail and transmission rates. LCRA requests an exemption because it has only four retail customers and believes the cost of preparing an earnings monitoring report to reflect such an insignificant amount of service is unwarranted. The commission has granted LCRA's petitions for good cause exception for the past three years.

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 call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before May 3, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments shall reference Project Number 20667.

TRD-9902151
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 12, 1999



Public Notice of Amendment to Interconnection Agreement

On April 1, 1999, Southwestern Bell Telephone Company and Level 3 Communications, LLC, collectively referred to as applicants, filed a joint application for approval of an 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20697. 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 13 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 20697. 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 May 3, 1999, 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 project 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. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20697.

TRD-9902081
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 1999



Public Notices of Interconnection Agreement

On March 30, 1999, Southwestern Bell Telephone Company and Network Intelligence, Inc., collectively referred to as applicants, filed a joint application for approval of 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20683. 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 13 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 20683. 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 April 30, 1999, 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 project 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. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20683.

TRD-9902080
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 1999



On April 6, 1999, United Telephone Company of Texas, Inc. d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint) and MaxTel Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20712. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

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 13 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 20712. 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 May 12, 1999, 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 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 docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20712.

TRD-9902085
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 1999



On April 6, 1999, United Telephone Company of Texas, Inc. d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint) and PageNet, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20711. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the

agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

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 13 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 20711. 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 May 12, 1999, 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 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 docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20711.

TRD-9902084
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 1999



On April 6, 1999, United Telephone Company of Texas, Inc. d/b/a Sprint, Central Telephone Company of Texas d/b/a Sprint (collectively, Sprint) and CommSouth Companies, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20709. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

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 13 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 20709. 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 May 12, 1999, 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 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 docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20709.

TRD-9902083
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 1999



On April 6, 1999, Southwestern Bell Telephone Company and American MetroComm/Texas, Inc., collectively referred to as applicants, filed a joint application for approval of 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 §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20707. 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 13 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 20707. 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 May 6, 1999, 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 project 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. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20707.

TRD-9902082
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 1999



Second Notice of Rescheduled Public Hearing

In the January 29, 1999 Texas Register (24 TexReg 473) the commission published proposed new rule §§25.272 - 25.275 in Project Number 17549 - Code of Conduct for Electric Utilities and their Affiliates. In the April 2, 1999 issue of the *Texas Register* (24 TexReg 2797) the commission noticed a public hearing in this proceeding for April 26, 1999, pursuant to Texas Government Code Annotated §2001.029. This public hearing has been canceled and rescheduled.

A public hearing in Project Number 17549 will now be conducted on June 7, 1999 at 9:00 a.m. in the commission's offices located in the William B. Travis Building, seventh floor, 1701 North Congress Avenue, Austin, Texas 78701. If you have any questions in regards to this public hearing, contact Bridget Rabel at (512) 936-7216.

TRD-9902149
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 12, 1999



Teacher Retirement System of Texas

Request for Proposals (RFP)

The Teacher Retirement System of Texas is requesting proposals to provide Investment Counseling services to the Teacher Retirement System of Texas' Board of Trustees.

Proposals must be submitted no later than **5:00 p.m. C.D.T on Friday, May 21, 1999.**

For more information and copies of the RFP, contact Charles Dunlap at (512) 397-6401.

The contract shall be awarded on the basis of demonstrated competence and qualifications to perform the services requested.

TRD-9902186
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: April 14, 1999



The University of Texas System, Board of Regents

Consultant Award Notification

The University of Texas Medical Branch at Galveston (UTMB) is pleased to announce the award of Request for Bid Number 8-21, Consulting Service Agreement, to Grenzebach, Glier and Associates, Inc. pursuant to the provisions of the Government Code, Chapter 2254.029. The request for bid was originally published in the *Texas Register* on August 7, 1998 (23 TexReg 8304).

Grenzebach, Glier and Associate's principle address is 55 West Wacker Drive, Suite 1500, Chicago, Illinois, 60680. The amount of the contract is \$80,000.00. The project is scheduled to begin on May 1, 1999, and be completed by August 31, 1999.

Grenzebach, Glier and Associates will be responsible for providing consulting services to assist in near-term priorities, information technology review, and an annual fund audit to allow focus on past and future fund raising opportunities to increase revenue and

participation for the overall improvement of the annual giving program.

TRD-9902115

Francie A. Frederick

Executive Secretary to the Board

The University of Texas System, Board of Regents

Filed: April 9, 1999



Texas Water Development Board

Request for Applications for Planning Grants under the FEMA Flood Mitigation Assistance (FMA) Program

The Texas Water Development Board (Board) requests the submission of applications leading to the possible award of Federally funded grants to develop Flood Mitigation Plans from communities in Texas with the legal authority to plan for and mitigate the impacts of flooding, and which participate in the National Flood Insurance Program (NFIP). A community is defined as (a) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP, or (b) a political subdivision or other authority that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of (a). Applications for Flood Mitigation Assistance Planning Grants may be submitted by eligible applicants from any area of the State. The available Planning Grant allocation amounts for Federal Fiscal Years 1998 and 1999 is \$196,200. These grants all require a 25% local match, of which not more than one-half (12.5%) may be in the form of in-kind services. Federal limits are set at no more than \$50,000 per grant to any one community, and no more than 1 grant to any one community per 5-year period.

The purpose of the FMA program is to provide grants to develop or update flood mitigation plans, and for implementing flood mitigation projects. The overall goal of the program is to fund cost-effective measures that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other NFIP-insurable structures. Specific goals include reducing the number of repetitively or substantially damaged structures and associated claims under the NFIP and encouraging long-term comprehensive mitigation planning.

Planning Grants are awarded to eligible communities to provide assistance in assessing the community's flood risk and to identify actions which will reduce that risk. The goal of the Planning Grant is to fund the community's development and preparation of a Flood Mitigation Plan which will define a comprehensive strategy

for implementing technically feasible flood mitigation activities for the area affected by the Plan. As specified by FEMA, the Flood Mitigation Plan will have, at a minimum:

a description of the planning process and associated public involvement, ie. workshops, public meetings, hearings, etc.;

a description of the existing flood hazard and identification of the flood risk, including estimates of the number and type of structures at risk, repetitive loss properties, and the extent of flood depth and damage potential;

the floodplain management goals for the area covered by the Plan;

an identification and evaluation of cost-effective and technically feasible mitigation alternatives considered;

a presentation of the strategy for reducing flood risks and continued compliance with the NFIP, and procedures for ensuring implementation, reviewing progress, and recommending revisions to the Plan; and

documentation of formal plan adoption by the legal entity submitting the Plan.

Applications will be evaluated according to rules provided in 31 TAC Chapter 368. Eligibility requirements are also stipulated in the rules. Potential applicants should contact the Board to obtain these rules, as well as applications for Planning Grants and the instruction sheets for completing the application, directing requests to Ms. Phyllis Thomas at (512) 463-7926, or Mr. Gilbert Ward at (512) 463-6418. Deadline for submitting applications for the planning grant funds is 5:00 P.M., May 31, 1999. Ten double-sided copies of the Planning Grant application, including a map of the proposed geographical planning area and the required attachments and Federal Forms, must be filed with the Executive Administrator prior to the respective deadline dates. Completed applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 447, 1700 North Congress Avenue, Austin, Texas; or by mail to the attention of Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

TRD-9902177

Suzanne Schwartz

General Counsel

Texas Water Development Board

Filed: April 14, 1999



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